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A TREATISE

ON

THE LAW OF INCOME TAX

DESIGNED FOR

THE USE OF THE TAXPAYER AND HIS ADVISERS;

WITH

THE INCOME TAX ACTS APPENDED.

FOURTH EDITION.

BY

E. M. KONSTAM,

ONE OF HIS MAJESTY'S COUNSEL.

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of account, to succession and discontinuance and setting up of new trades, &c., are incorporated in Chapter VI.; and those which apply to interest, &c., and foreign possessions in Chapters VII. and VIII. Those provisions of the Act of 1927 which deal similarly with income from employments under Schedule E are embodied in Chapter X. The Act of 1928 sets up a new machinery for assessing tax deducted in making payments under General Rule 21: and applies that rule to copyright royalties; these matters are also dealt with in Chapter VIII.

The consequential changes as to returns, claims for relief, assessments, and so on, are referred to in the later Chapters.

As far as case-law is concerned, the subjects to which most attention has been drawn since the third edition was published early in 1926, have perhaps been those of the "residence" of individuals (*I. R.* v. *Lysaght, I. R.* v. *Levene*) and of companies (*Egyptian Delta Land, etc. Co.* v. *Todd*); and there has been some extension of view as regards "charities" (see *e.g.*, *Roberts Marine Mansions Trustees* v. *I. R.*, *Peeblesshire Nursing Association* v. *I. R.*). The pages dealing with these topics have been largely rewritten in consequence.

Numerous other decisions pronounced in the interval have been incorporated; and the whole book has been subjected to drastic revision.

I am again indebted to my friend, Mr. Michael E. Rowe, of Gray's Inn, for help in seeing this edition through the press and in revising the tables and index.

E. M. K.

Temple,
July, 1929.

PREFACE

TO THE FIRST EDITION.

THIS book is an attempt to provide a continuous and self-contained account of the law of income tax, for the information of the taxpayer and of the public. The attempt may be rash; but it seems imperative that it should be undertaken, because the obscurity of the Income Tax Acts has become a bye-word, and because the importance of the subject increases as the value of money declines.

The Income Tax Acts now in force (with the exception of their purely administrative provisions) are appended to the treatise. The consolidation of the previous Acts by that of 1918 has somewhat lightened the task, but has not rendered it unnecessary; for few of the ambiguities and redundancies of the older statutes have been removed, and still fewer of their omissions supplied. The law of income tax affords a perhaps unique instance of a body of law which purports to be contained in statutes, but which in fact rests upon principles that are to be found only in the judgments of the Courts and of the House of Lords, while the statutory directions are often mere illustrations of those principles, and fail to illustrate them exhaustively.

In dealing both with decided cases and with statutory provisions, I have not hesitated to state my own opinion; as regards decisions, I have discussed at some length those which seem open to criticism; as regards sections and rules, I have endeavoured to point out those which seem superfluous or contradictory, and where possible to dovetail those which tend to overlap. It would be too much to hope that in either case the attempt has been successful; it has at least been sincere.

* * * * * * *

. . . Each time that reference is made to a fresh provision of the Income Tax Acts, the exact page in the Appendix on which that provision is to be found has been indicated in the footnotes. The Table of Statutes also shows the reference in the text to each provision of those Acts; I have endeavoured to make the Index as complete as possible and to provide ample cross-references.

E. M. K.

TEMPLE,
19*th March*, 1921.

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THE LAW OF INCOME TAX.

CHAPTER I.

THE INCOME TAX AND ITS GRADUATION: RELIEFS.

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The Income Tax.

THE income tax is a tax on "income" from various sources, estimated according to sets of rules which vary according to the source of the income; many of these sets of rules are highly artificial, so that income for income tax purposes does not by any means necessarily correspond with income in the colloquial sense of money which the recipient receives in the year and which he can spend or save. But for income tax purposes "income" must be money or something capable of being turned into money (*a*); a mere privilege, though it may be of value to the person who enjoys it, is not a part of his income (*b*). On the other hand, an accretion of capital is not "income" (*c*), although income does not escape income tax merely because it is used to increase

(*a*) *Tennant* v. *Smith,* [1892] A. C. 150, *infra,* p. 311.

(*b*) In theory at any rate, even the annual value on which the tax is charged under Schedule A is capable of being realized by letting the property at a rack-rent.

(*c*) *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 424, *infra,* p. 125.

or recoup capital (*d*); nor is it any the less "income" because its production involves a wastage of capital (*e*).

By a recent amendment, the income tax has been made to consist of two parts:—First, the income tax proper, which is charged at a standard rate in the £ on income generally; and, secondly, the additional tax which is charged on the excess of an individual's total income above a stated amount, according to a graduated scale of rates in the £, and which is called "sur-tax" (*ee*). The sur-tax takes the place of the tax formerly called super-tax, and is treated separately in this book (*f*); the earlier Chapters deal with income tax at the standard rate, which is for convenience described as "income tax."

The tax is in theory imposed year by year; in practice it is permanent, but the annual Finance Act fixes for each year the standard rate and the rates of sur-tax (*ff*).

The Schedules.

"Income" is grouped, according to the sources from which it is derived, under five Schedules, A, B, C, D, and E (*g*). This division, though recently improved (*h*), is still somewhat arbitrary; Schedule A relates to property in land, and tithe rentcharges confirmed under the Tithe Act, 1836. Schedule B to the occupation of land (other than ordinary dwelling-houses and business premises), whether or not it is occupied for business or agriculture; Schedule C relates to interest, &c. payable out of public revenues; Schedule D includes in its scope all other kinds of interest, discounts, &c., trades and professions (but not agriculture, except at the option of a particular occupier of land), foreign possessions and securities, tithes, manorial dues, &c., and mis-

(*d*) See, *e.g.*, *Granite Supply Assn.* v. *Kitton* (1905), 5 Tax C. 168, *infra*, p. 128; *Ounsworth* v. *Vickers*, [1915] 3 K. B. 267, *infra*, p. 129.

(*e*) *Coltness Iron Co.* v. *Black* (1881), 6 A. C. 315, *infra*, p. 127.

(*ee*) Finance Act, 1927, s. 38.

(*f*) See Chap. XIV.

(*ff*) See Act of 1928, s. 15 (1); Act of 1929, s. 1 (1); *infra*, pp. 610, 615.

(*g*) Income Tax Act, 1918, s. 1, *infra*, p. 406; *Coman* v. *Rotunda Hospital*, [1921] 1 A. C. 1.

(*h*) Finance Acts, 1922, s. 18, *infra*, p. 546; 1926, s. 28 and 3rd Sched., *infra*, pp. 579, 587.

cellaneous sources of income; Schedule E relates to the profits of offices, employments and pensions.

These Schedules are much the most important part of the Act of 1918; but because they are called "Schedules," they are shown as a mere appendage to that Act, and are included in its so-called "First Schedule" (*i*).

Each of the Schedules (A, B, C, D, E) contains its own rules of assessment; but many are found in the body of that Act and in the later Finance Acts. The provisions of the Schedules are, however, mutually interchangeable so far as they are applicable (*j*).

The Income Tax is One Tax.

The "unfortunate arrangement" of the Schedules as a mere supplement to the Act has, however, one point in its favour; it shows that the income tax, under whatever Schedule it happens to be charged, is one tax. In the past a different view was sometimes taken, until the decision of the House of Lords in *London County Council* v. *Attorney-General* (*k*); but the following passage from the speech of Lord MACNAGHTEN in that case contains the classic statement of the nature of the tax:—

"Income tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct. There is no difference in kind between the duties of income tax assessed under Schedule D, and those assessed under Schedule A or any of the other Schedules of charge. One man has fixed property, another lives by his wits; each contributes to the tax if his income is above the prescribed limit. The standard of assessment varies according to the nature of the source from which taxable income

(*i*) See Report of the Royal Commission on Income Tax, 1920, Cmd. 615, para. 402.

(*j*) Act of 1918, s. 208, *infra*, p. 464.

(*k*) [1901] A. C. 26; see pp. 35, 36; see also *Coman* v. *Rotunda Hospital, supra; Brown* v. *National Provident Institution*, [1921] 2 A. C. 222, per Lord HALDANE at p. 233, and per Lord ATKINSON at p. 246; *I. R.* v. *Pakenham*, [1927] 1 K. B. 594, per ROWLATT, J., at p. 611.

is derived. That is all. Schedule A contains the duties chargeable for and in respect of the property in all lands, tenements, and hereditaments capable of actual occupation. There the standard is annual value. It is difficult to see what other standard could have been adopted as a general rule. But there again, if the subject of charge be lands let at rack-rent, the annual value is 'understood to be the rent by the year at which the same are let.' In every case the tax is a tax on income, whatever may be the standard by which the income is measured. It is a tax on 'profits or gains,' in the case of duties chargeable under Schedule A and everything coming under that Schedule—the annual value of lands capable of actual occupation as well as the earnings of railway companies and other concerns connected with land (*kk*)—just as much as it is in the case of the other schedules of charge. And it is to be observed that the expression 'profits or gains' which occurs so often in the Income Tax Acts is constantly applied without distinction to the subjects of charge under all the schedules."

Direct Assessment or Deduction at the Source.

The speech just quoted was delivered in one of the leading cases that have arisen in connection with deduction of tax "at the source." The person who is ultimately liable for the tax either pays it under a direct assessment, or submits to a deduction of tax at the hands of some other person from whom he is entitled to receive money; and so important is the latter method of collection that at the present day at least 70 per cent. of the yield of the tax is collected by it (*l*). The tax charged under Schedule A is, in general, payable by the occupier of land; but if he is a tenant, he can deduct tax against his landlord on payment of rent. An owner of land, if he is also the occupier, pays the tax directly; but whether he has paid it himself or borne it by way of deduction, he is entitled to deduct tax against a mortgagee (*m*).

(*kk*) These are no longer in Sched. A; see note (*h*), *supra*.

(*l*) Report of Royal Commission, para. 154.

(*m*) *Vide infra*, pp. 55, 59.

Again, the tax on interest on public securities is deducted by the authority or agent who pays the interest (*n*). A company is taxable on the whole of its profits, and deducts the tax in paying dividends (*o*); but an individual or a partnership carrying on business is directly assessed (*p*). The tax charged on offices, employments and pensions under Schedule E is largely deducted at the source (*q*).

Where a payment out of profits gives the payer a right to deduct tax, he cannot also have his assessment reduced by the amount of the payment (*r*).

The Income Tax Year.

The year of assessment for the purposes of income tax begins on the 6th April and ends on the following 5th April (*s*). Under Schedules A and B the annual value of the land as fixed for that year (*t*) constitutes the taxable income of the year of assessment; under Schedule C, and in other cases where tax is deducted before payment of the income (*u*), the tax is, in the first instance at any rate, calculated according to the income thus paid in the year of assessment itself. But under Schedules D and E, speaking generally, the amount of income to be taxed is ascertained (where the tax is levied by direct assessment) according to the profits of the year preceding the year of assessment (*v*); and in such cases tax is payable on that amount, although no profits arise from that source within the year of assessment (*w*). No tax is payable, however, if the person has before the

(*n*) Schedule C; see Chap. V.

(*o*) See pp. 264 *sqq.*, *infra*.

(*p*) See pp. 262 *sqq.*, *infra*.

(*q*) See Chap. X.

(*r*) Income Tax Act, 1918, s. 209 (1) (a), *infra*, p. 464.

(*s*) Sect. 2, *infra*, p. 406. In the Income Tax Acts from 1919 onwards, the year of assessment beginning as above is described as "the year 1919-20," "the year 1920-21," and so on; Finance Act, 1919, s. 28, *infra*, p. 528.

(*t*) Not necessarily *in* the year, *vide infra*, p. 46.

(*u*) See Chaps. IV. and VII.

(*v*) See Chaps. VI. and X.; Finance Acts, 1926, s. 28, *infra*, p. 579; 1927, s. 45, *infra*, p. 604.

(*w*) Act of 1926, s. 22, *infra*, p. 577, which altered the law as laid down in *Brown* v. *National Provident Institution*, [1921] 2 A. C. 222; *Whelan* v. *Henning*, [1926] A. C. 293; *Grainger* v. *Maxwell*, [1926] 1 K. B. 430; *I. R.* v. *Drysdale's Trees*. (1928), 13 Tax C. 565; see also p. 225, *infra*.

beginning of the year of assessment ceased to possess the source of income from which profits arose in the preceding year, or in respect of which he was thus taxable in the preceding year (*y*). Each source of income must be looked at separately for this purpose; *e.g.*, a person is not to be taxed in respect of income from foreign shares which he has ceased to possess, merely because he still possesses a foreign business (*z*). There are special provisions for computation where any source of income taxable under Schedules D or E ceases to be possessed, or is acquired, within the year of assessment (*a*).

The tax is payable in one or two instalments for the year according to the source of income on which it is imposed; in the case of railway companies it is payable quarterly, and in that of weekly wage-earners, half-yearly (*b*).

The Income Tax Acts.

Many of the cardinal principles on which the liability to income tax is based and by which the amount of that liability is measured are left unexpressed in the Income Tax Acts, and are to be found only in the decisions of the Courts and of the House of Lords, which are based upon inferences drawn from the "general scheme" of the Acts. For instance, the Acts may be searched in vain for any explicit direction that a mere privilege is not to be charged as income (*c*); that an accretion of capital is not so chargeable (*d*); that the question whether a company carries on business in the United Kingdom is to be answered by ascertaining where its head and seat and directing power are

(*y*) In such cases no liability is imposed by sect. 22 of the Act of 1926, and the rules of computation referred to do not themselves create a liability to tax; see the cases cited in note (*w*) and *R.* v. *Special Commrs., Ex parte Shaftesbury Homes,* [1923] 1 K. B. 393.

(*z*) Cf. *Grainger* v. *Maxwell, supra.*

(*a*) Schedule D, Case III. r. 2, *infra,* p. 507; Act of 1926, ss. 29 (1), 30, 31, *infra,* pp. 579, 582; Act of 1927, s. 45 (4), (5), *infra,* p. 605; see Chaps. VI.—VIII. and X.

(*b*) *Vide infra,* p. 396.

(*c*) *Tennant* v. *Smith, supra,* p. 1.

(*d*) *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 424; *I. R.* v. *Blott,* [1921] 2 A. C. 171.

situate (*e*); that in computing the profits of a trade any expense (as to which there is no express prohibition) is to be deducted, if on the facts of the case it is a proper debit item to be charged against incomings (*f*).

The Income Tax Acts, therefore, do not provide a code of the law on the subject (*g*). They consist of a number of more or less disconnected enactments which leave undealt-with many matters of the first importance; while they frequently cover the same ground more than once, in such a manner that the reader is puzzled to know whether the second enactment is intended to limit or expand the first, or is merely superfluous (*h*).

Until 1918 these enactments were contained in a series of Acts commencing with the Income Tax Act, 1842 (*i*), of which that Act, the Income Tax Act, 1853 (*k*), and the Taxes Management Act, 1880 (*l*), were the most important. They were repealed, re-arranged and re-enacted with some verbal amendments by the Income Tax Act, 1918 (*m*).

Any improvement in clarity that may have been effected by that process has been counteracted by the passing of ten subsequent Acts. For the Finance Act of each year contains, as a rule, a common form of clause applying to the income tax sanctioned thereby the enactments in force in the previous year (*n*), subject of course to any amendments contained in the annual Act itself. Thus, the income

(*e*) See, *e.g.*, *De Beers Consolidated Mines* v. *Howe*, [1906] A. C. 455, and the cases cited therewith, *infra*, pp. 96 *sqq*.

(*f*) *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, [1915] A. C. 433; *infra*, p. 117.

(*g*) Report of Royal Commission, paras. 398—401.

(*h*) See, for instance, the rules in No. IV. of Schedule A "for estimating annual value," *infra*, p. 476, which appear to be mere illustrations, selected at random and far from exhaustive, of the application of the definition of "annual value" in the General Rule; the rules as to the method of assessment under Schedule E, *infra*, p. 259, note (*b*); the provisions as to "additional assessments" and "surcharges" in sects. 125 and 126 (*infra*, p. 434), where sect. 126 deals in a different way with one class of the cases already dealt with by sect. 125.

(*i*) 5 & 6 Vict. c. 35. This Act itself reproduced many of the provisions of Acts of 1799 (39 Geo. 3, c. 13) and 1803 (43 Geo. 3, c. 122): see per Lord MACNAGHTEN in *London County Council* v. *A.-G.*, [1901] A. C. at pp. 37, 38.

(*k*) 16 & 17 Vict. c. 34. (*l*) 43 & 44 Vict. c. 19.

(*m*) 8 & 9 Geo. 5, c. 40. Certain of the enactments referred to are repealed only so far as they relate to income tax: see the Seventh Schedule.

(*n*) *E.g.*, Act of 1929, s. 1 (2), *infra*, p. 615.

tax is now regulated by the Income Tax Act, 1918, together with Parts II. of the Finance Acts, 1919—1928 inclusive (*o*). They are set out in the Appendix to this book.

Although the "standard rate" (*p*) is not fixed until the Finance Act for the year is passed, the provisions in force on the last day of the preceding year are carried forward in order to enable arrangements for assessment and collection at the source and so forth to proceed continuously at any time of the year (*q*); and provision is made for subsequent deduction (or direct assessment) where the amount already deducted proves insufficient owing to the new Finance Act imposing tax at a higher rate (*r*).

Construction of the Acts.

The intention with which the Income Tax Act, 1918, was passed, was to consolidate (*s*) and not to codify the earlier enactments; there was no attempt to harmonize them, and in but few places were any existing ambiguities removed. Even apart from the fact (to which attention has already been drawn) that many of its underlying principles can only be gathered by implication, it is extraordinarily difficult to interpret. Ordinary canons of construction cannot be applied; it is unsafe to assume without diligent study that the same word is used in two places in the same sense, that different words are not used to mean the same thing, or that any series of expressions or any set of provisions is intended to be exhaustive, so that what is not mentioned is excluded. "In these Acts," says Lord WRENBURY (*t*), speaking of the Acts of 1842 and 1880, "it is not possible

(*o*) The Act of 1929 makes no amendments.

(*p*) Act of 1927, s. 38, *infra*, p. 598.

(*q*) Act of 1918, s. 210, *infra*, p. 464.

(*r*) Sect. 211, *vide infra*, p. 241. The section does not provide for the converse case of a Finance Act imposing the tax at a lower rate than that of the previous year.

(*s*) See the title of the Act, *infra*, p. 407; and Report of Royal Commission, paras. 4, 398; also per Lord WRENBURY in *Great Western Rail. Co.* v. *Bater*, [1922] 2 A. C. at p. 31.

(*t*) In *Kensington Commrs.* v. *Aramayo*, [1916] 1 A. C. at pp. 227—229; see also his lordship's opening remarks at p. 225.

to rest any conclusion upon a particular word. The same word is in one section used in one sense, and in another in a different sense . . . . From a change of language, I should in the absence of other considerations infer a change of meaning. But I cannot do so in this case . . . . The change of language is attributed only to the very indifferent drafting which is found throughout this most complicated and ill-digested Act"; and Earl LOREBURN adds (*u*), "I regret to say that in this respect (*v*) the language of the different Acts is not coherent. You may strain the language to mean either one thing or the other. You must strain it to arrive at any conclusion." Except in a small number of instances, the language of the Act of 1918 is open to the same strictures, and is as difficult to interpret, as that of the earlier Acts; and the difficulty is increased by the copious amendments contained in the subsequent annual Acts. A section in one of these Acts may declare the meaning of an earlier provision, *e.g.*, a rule of the Act of 1918; but unless it does so, the later enactment is not to be looked at as interpreting the earlier (*w*).

It is often said that a taxing Act must be construed strictly in favour of the subject; it may perhaps be more correct to say that a taxing Act must be construed against either the Crown or the person sought to be charged, with perfect strictness—so far as the language of the Act enables the Judges to discover the intention of the Legislature. "No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden upon him . . . . The only safe rule is to look at the words of the enactments and see what is the intention expressed by those words" (*x*). In the case in which that language was used, the House of Lords refused to depart from the

(*u*) *Ibid.* at p. 236.

(*v*) The matter in question in *Aramayo's* case is one of the very few that are elucidated by the Act of 1918, *vide infra*, p. 359.

(*w*) *Ormond Investment Co.* v. *Betts*, [1928] A. C. 143.

(*x*) Per Lord BLACKBURN in *Coltness Iron Co.* v. *Black* (1881), 6 A. C. at p. 330, *vide infra*, p. 127; see also per ROWLATT, J., in *Cape Brandy Syndicate* v. *I. R.*, [1921] 1 K. B. at p. 71, and per Lord BUCKMASTER in *Ormond Investment Co.* v. *Betts*, [1928] A. C. at p. 151.

strict reading of the Act in order to find a fairer and more equitable way of taxing the subject; neither, on the other hand, will the Courts depart from it so as to bring within the scope of the tax any matter upon which Parliament has not, on a strict reading of the Act, imposed the tax (*y*). "I know of no law which prevents a man from avoiding a duty which has not attached to the property . . . . A man is perfectly entitled, if he can, to avoid the payment of duty by disposing of his property in any way not forbidden by the Act. The argument that his motive is to escape duty appears to me wholly irrelevant, because a man is perfectly justified in avoiding and escaping the duty which will arise in the future, but which has not yet attached to any property which he possesses" (*z*). These words were spoken of estate duty, but they are equally true of income tax (*a*).

Application to the Three Countries.

The Income Tax Acts apply to the whole of the United Kingdom, that is, of Great Britain and Northern Ireland (*aa*); although there are a series of special provisions modifying their application in Northern Ireland (*b*) (chiefly as to the methods of assessment), and a few modifications also as regards Scotland (*c*). The decisions of the Courts in any of the three countries are not binding upon the Courts of any other, but are generally followed (*d*). But a decision

(*y*) *Brown* v. *National Provident Institution*, [1921] 2 A. C. 222; see per Lord SUMNER at p. 257. Cf. also *A.-G.* v. *Richmond and Gordon* (*Duke*), [1908] 2 K. B. 729; [1909] A. C. 466.

(*z*) Per FARWELL, L.J., [1908] 2 K. B. at p. 743.

(*a*) Certain dispositions are, however, now made nugatory for income tax purposes by sect. 20 of the Finance Act, 1922, *vide infra*, p. 319.

(*aa*) See Royal Titles Act, 1927, 17 & 18 Geo. 5, c. 4, s. 2 (2).

(*b*) These will be found in Part IX. ss. 186—206, *infra*, p. 458; the power of the Parliament of Northern Ireland to make laws with respect to the imposing of taxes does not extend to income tax or super-tax: Government of Ireland Act, 1920, 10 & 11 Geo. 5, c. 67, s. 21 (1); but it may grant relief from either of those taxes to individuals resident and domiciled within its jurisdiction: sect. 25. As to the Irish Free State, see Constitution Act, 1922, 13 Geo. 5, Sess. 2, c. 1, s. 2; Consequential Provisions Act, 13 Geo. 5, Sess. 2, c. 2, s. 5, and orders thereunder.

(*c*) See, *e.g.*, Act of 1918, ss. 35, 85, 96, 166.

(*d*) A few points on which divergent decisions have been given in the different countries are noted in the text as they occur; see, *e.g.*, *Howe* (*Earl*) v. *I. R.*,

of the House of Lords upon a case from any one of the countries is binding in the other two. In deciding a point on which there had been a conflict of decision between the English and Scottish Courts, the House of Lords have adopted the following rule—"You must take the meaning of legal expressions from the law of the country to which they properly belong, and in any case arising in the sister country you must apply the statute in an analogous or corresponding sense, so as to make the operation and effect of the statute the same in both countries"; it is not true to say that, "if the words have a definite legal meaning in England, you must not look at that meaning unless it be in vogue north of the Tweed" (*e*).

Graduation of the Tax.

The income tax proper, though levied at a standard rate, is mitigated in its application to individuals by means of certain "reliefs," which may be summarily described as follows:—

Relief by allowance of tax on 135*l.* or 225*l.*, as the case may be;

Relief in respect of dependants other than wives;

Relief in respect of earned income;

Relief in respect of incomes of persons of sixty-five;

Relief by allowance of half the standard rate on 225*l.* or some smaller sum (*f*);

Relief in respect of life insurance premiums and similar payments (*g*);

Relief in respect of Dominion income tax (*h*).

[1919] 2 K. B. 336, *infra*, p. 308; *London Cemetery Co.* v. *Barnes*, [1917] 2 K. B. 496, *infra*, p. 160; *Leith, &c. Steam Packet Co.* v. *Musgrave* (1899), 1 F. 1117, *infra*, p. 150.

(*e*) *Special Commrs.* v. *Pemsel*, [1891] A. C. 531, *infra*, p. 286, per Lord MACNAGHTEN at p. 580.

(*f*) As to the above, see pp. 13—21, *infra*. These "reliefs" are grouped under that name by sect. 40 of the Finance Act, 1927, *infra*, p. 599, and the 5th Schedule specifies the sections of the Acts of 1920 and 1925 to be read with it. They were at one time called "allowances and deductions": Act of 1920, 3rd Sched., note at end, *infra*, p. 540, (*d*).

(*g*) Act of 1918, s. 32: see pp. 21—25, *infra*.

(*h*) Act of 1920, s. 27: see pp. 25—31, *infra*.

The last of these is also admissible in the case of companies and other bodies of persons.

The above will be considered at the outset, before discussing in detail the various sources of income which give rise to liability and the principles of assessment. Exemptions and abatements which attach to the income of charitable bodies and other institutions, are dealt with in a later Chapter (*i*). The sur-tax, which represents a further stage of graduation, is treated separately (*k*).

What Individuals are Entitled to Reliefs.

The reliefs (*l*) above described (apart from relief in respect of Dominion tax) are given to individuals only (*m*), including a husband and wife in certain circumstances (*n*); partners in trades or professions or in the occupation of land, and joint owners or tenants of any property, enjoy these reliefs according to their respective interests (*o*). But joint occupation of land does not give each joint occupier a right to any relief unless there is also a partnership between them (*p*), and the partnership must exist in fact and not merely on paper (*q*). There is no right to any relief in respect of income while the source of that income is in the hands of a trustee in bankruptcy (*r*).

An individual who is not resident (*s*) in the United Kingdom is given no right to receive any such relief, unless he is a British subject, or unless he belongs to one of the classes described below. In these excepted cases the

(*i*) See Chap. XII.

(*k*) See Chap. XIV.

(*l*) See notes (*f*), (*g*), (*h*), *supra*, p. 11.

(*m*) Sects. 16, 17, 23, *infra*, pp. 408, 410. This was the law even before the passing of the Act of 1918: see *Curtis* v. *Old Monkland, &c. Assocn.*, [1906] A. C. 86; *Mylam* v. *Market Harborough Advertiser Co.*, [1905] 1 K. B. 708; but with the language of the provisions now in force those decisions are no longer needed.

(*n*) Finance Act, 1920, ss. 18, 25, *infra*, pp. 529, 533; Act of 1925, s. 15 (2), *infra*, p. 571; Income Tax Act, 1918, General Rules, rr. 16, 17, *infra*, p. 520.

(*o*) Act of 1918, s. 20, *infra*, p. 409. As to earned income, however, see sect. 14 (3) (c).

(*p*) *McKie* v. *Luck* (1925), 9 Tax C. 511.

(*q*) *Hawker* v. *Compton* (1922), 8 Tax C. 307; *Dickenson* v. *Gross* (1927), 137 L. T. 351; 11 Tax C. 614; *I. R.* v. *Williamson* (1928), 7 A. T. C. 566.

(*r*) *I. R.* v. *Fleming*, [1928] S. L. T. 530.

(*s*) *Vide infra*, pp. 270 *sqq.*

whole of the individual's income is taken into account in calculating the relief, including any part which is not subject to United Kingdom income tax (*t*). The following are the classes referred to:—persons who are or have been employed in the service of the Crown, widows of such persons, persons who are employed in the service of any native State under the protection of His Majesty, persons who are employed in the service of any missionary society, persons resident in the Isle of Man or Channel Islands, persons who have previously resided within the United Kingdom and are now resident abroad for the sake of their own health or that of a member of their family resident with them. If the claimant is a British subject, he need not belong to any of these classes; but his income not chargeable in the United Kingdom is nevertheless brought into the calculation, if he is resident abroad (*u*).

Calculation of Reliefs.

In the case of an individual who is entitled to any of these reliefs (apart from relief for Dominion tax) the amount of the income tax which would otherwise be levied at the standard rate on his total income is reduced by the amount of tax at the standard rate, or at half the standard rate (as the case may be), on certain portions of his total income (*v*). The portions of total income to which the reduction is applied are arrived at as follows:—

One-sixth of the "earned income" (*w*) is first deducted from the total income; but the deduction may not in any case exceed 250*l*. (*x*). In the case of an individual of sixty-

(*t*) Finance Act, 1920, s. 24, *infra*, p. 532.

(*u*) As to claims for allowances or deductions, proof of status or residence, and appeal, see Chap. XV.

(*v*) The statement in the text is intended to give the effect of sect. 40 (1), (2) of the Act of 1927, *infra*, p. 599, which sub-sections impart a somewhat different form to these reliefs, though they do not repeal the previously existing provisions cited in the following notes, nor do they appear to alter them in substance. Owing to the change of form, the expressions "assessable income" and "taxable income" appear to have lost their use; but as they remain in the unrepealed sections, it has been thought better to preserve them in the text.

(*w*) As to the meaning of this expression, *vide infra*, p. 17.

(*x*) Act of 1925, s. 15 (1), *infra*, p. 571.

five, or a husband with a wife of sixty-five, if the income (whether earned or not) does not exceed 500*l.* a year, one-sixth of the whole is deducted (*y*).

The net sum thus arrived at is called the "assessable income" (*z*); from it, there is deducted in the case of a married couple, 225*l.*, with a further sum if the wife herself has an earned income; in the case of a single man or woman, 135*l.* (*zz*); and certain further deductions are made in respect of children and other dependants (*a*). The deduction of 225*l.* in the case of a married couple is not allowed (*zz*) unless either (1) the husband and wife are living together, or (2) (even if she is not living with him) the wife is wholly maintained by the husband during the year of assessment in such a way that in paying for her maintenance he is unable to deduct tax against the sums paid, and therefore to exclude those contributions from his total income as ascertained for income tax purposes (*b*). In any other case, the husband is entitled to a deduction of 135*l.* only, as if he were single (*c*); if the wife is living apart and is carrying on a trade or is entitled to any property or profits to her separate use, she is assessable separately from her husband (*d*), and is therefore also entitled to the deduction of 135*l.*

Where the deduction of 225*l.* is admissible in the case of a married couple, and the total income includes any earned income of the wife, the amount of the deduction is increased by five-sixths of the wife's earned income; the increase is limited to 45*l.* (*e*). This increase does not prevent the full deduction allowed by sect. 15 of the Act of 1925 (*f*) being

(*y*) Act of 1925, s. 15 (2), *vide infra*, p. 19.

(*z*) Act of 1920, s. 33, *infra*, p. 539; Act of 1925, s. 15 (1), (2), *infra*, p. 571; see note (*v*), *supra*.

(*zz*) Act of 1920, s. 18, *infra*, p. 529; s. 25, *infra*, p. 533.

(*a*) *Vide infra*, p. 19.

(*b*) As to cases in which tax can be deducted against payments made for a wife's maintenance, *vide infra*, p. 203.

(*c*) Finance Act, 1920, s. 18, *infra*, p. 529.

(*d*) *Vide infra*, p. 279.

(*e*) Sect. 18 (2), as amended by Act of 1927, s. 40 (1) and 5th Sched., Part I. Such income must be *bonâ fide* earned by the wife in her own right: *Thompson* v. *Bruce* (1927), 11 Tax C. 607.

(*f*) *Vide infra*, p. 17.

calculated on the aggregate earned incomes of husband and wife.

The result, after making these various deductions, is called the "taxable income" (*g*).

The individual entitled to any of the above reliefs has his income tax reduced by tax at the standard rate, that is (at present) at 4*s*. in the £, on the amount of any of the above deductions which is admissible (*h*). Further, any individual entitled to relief (*i*) has his income tax reduced by tax at half the standard rate, that is (at present) at 2*s*. in the £, on 225*l*., if he has so much total income remaining after the above admissible deductions have been made from it, or if he has less than 225*l*. remaining, then on any smaller amount of total income that remains (*k*). Where relief is due in respect of Dominion income tax, there will be a further adjustment of the amount of United Kingdom tax payable (*l*). But the above reliefs are not to be increased by reason of any claim for adjustment of assessment or for repayment on other grounds except those in respect of Dominion tax and in respect of life insurance premiums (*m*).

Where the income is subject to direct taxation, the amount of tax to be levied is reduced by these reliefs; where it has already been taxed by deduction at the source, the amount by which the tax is thus reduced is repaid (*n*).

It seems futile to multiply examples of the various possible sets of facts, but the few that follow may perhaps be of some use as illustrating these rules:—

(1) a single man or woman who has an income of 135*l*. or less is not liable for any tax;

(2) a married couple in the circumstances above stated who have an income of 225*l*. or less are not liable for any tax;

(*g*) Sect. 17, *infra*, p. 408; see note (*v*), *supra*, p. 13.

(*h*) Act of 1927, s. 40 (1), *infra*, p. 599. As to the standard rate, see sect. 38 (1).

(*i*) *Vide supra*, p. 12.

(*k*) Sect. 40 (2).

(*l*) Sect. 40 (1), (2), provisoes; *vide infra*, p. 25.

(*m*) This appears to be the effect intended by sect. 40 (3); as to life insurance, *vide infra*, p. 21.

(*n*) See Chap. XV.

(3) a single man or woman who has an income (wholly earned) of 162*l.* or less is not liable for any tax;

(4) a married couple as above who have an income (wholly earned) of 270*l.* or less are not liable for any tax;

(5) a married couple as above who have an income (wholly earned) of 300*l.*, 30*l.* of which is earned by the wife, are not liable for any tax;

(6) the tax due from a single man or woman who has an income (none of it earned) of 360*l.* is 2*s.* in the £ on 225*l.*;

(7) the tax due in the case of a married couple as above who have an income (none of it earned) of 450*l.* is 2*s.* in the £ on 225*l.*;

(8) the tax due from a single man or woman who has an income (wholly earned) of 432*l.* is 2*s.* in the £ on 225*l.*;

(9) the tax due in the case of a married couple as above who have an income (wholly earned by the husband) of 540*l.* is 2*s.* in the £ on 225*l.*;

(10) the tax due in the case of a married couple as above who have an income (none of it earned) of 1,200*l.* is 2*s.* in the £ on 225*l.* *plus* 4*s.* in the £ on 750*l.*;

(11) the tax due in the case of a married couple as above who have an income (wholly so earned) of 1,200*l.* is 2*s.* in the £ on 225*l.* *plus* 4*s.* in the £ on 550*l.*;

(12) the tax due in the case of a married couple as above who have an income of 1,200*l.* (of which 600*l.* is so earned) is 2*s.* in the £ on 225*l.* *plus* 4*s.* in the £ on 650*l.*;

(13) the tax due in the case of a married couple as above who have an income (wholly so earned) of 2,400*l.* is 2*s.* in the £ on 225*l.* *plus* 4*s.* in the £ on 1,700*l.*;

(14) in all the above cases the persons concerned are assumed to be under sixty-five; the tax due from an individual of sixty-five who has an income (whether earned or not) of 500*l.* will be 2*s.* in the £ on 225*l.* *plus* 4*s.* in the £ on 56*l.* 6*s.* 8*d.*;

(15) the tax due in the case of a married couple living together, one of whom is sixty-five, and who have an income (whether earned or not) of 500*l.* will be 2*s.* in the £ on 191*l.* 6*s.* 8*d.*

Earned Income.

As already stated, in order to arrive at the assessable income of an individual, one-sixth of his "earned income" is to be deducted from his total income; but this deduction is not to exceed 250*l.* (*o*). So that if his earned income is, say, 1,200*l.*, he is entitled to a deduction of tax at the standard rate on 200*l.*; but if it is 1,800*l.* or over, the deduction of tax is calculated on 250*l.* (*oo*).

In general terms it may be said that "earned income" covers salaries, wages and pensions, as well as the profits of any trade, business or profession, carried on by the individual himself. Only the following kinds of income are included by the definition of the term (*p*):—

income arising in respect of any remuneration from any office or employment of profit (*q*) held by the individual, after any deduction allowed in respect of a contribution to a superannuation fund has been made (*r*);—

income arising in respect of any pension, superannuation, or other allowance, deferred pay or compensation for loss of office, given in respect of the past services in any office or employment of profit of the individual or of her husband or his or her parent; it makes no difference whether the individual, husband or parent has contributed to the pension, &c. or not (*q*);—

income in respect of any pension, &c. given to the individual in respect of the past services of any person deceased (whether or not those services have been done in any office or employment of profit) (*q*);—

(*o*) Act of 1925, s. 15 (1), *infra*, p. 571.

(*oo*) Act of 1927, s. 40 (1), *infra*, p. 599.

(*p*) Act of 1918, s. 14 (3), read with Finance Act, 1920, s. 33, *infra*, p. 539.

(*q*) Chargeable in all but a very limited class of cases under Sched. E: see Chap. X.

(*r*) *Frame* v. *Farrand* (1928), 13 Tax C. 861; *vide infra*, p. 252.

income arising in respect of Civil List pensions (*s*);—

income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual (*t*);—

any income charged under Schedule B (*u*), provided that it "is immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation, either as an individual, or, in the case of a partnership, as a partner personally acting therein";—

any income charged under Schedule D (*x*), provided as above;—

in certain circumstances the annual value of a house occupied rent free by a clergyman or minister of any religious denomination (*y*).

It will be observed that where a trade, profession or vocation is carried on in partnership, the income of a sleeping partner is not "earned income"; still less is that of a shareholder in a company.

In order to be "earned income," the profits must be earned by the individual to whom they belong; and the income of a business carried on by trustees on behalf of minors (*z*), or by a curator on behalf of a lunatic (*a*), is not earned income.

(*s*) Taxed under Sched. E: see Chap. X.

(*t*) If the property is land, the income is charged under Sched. A: see Chap. II. Other forms of income within this description may be charged under Sched. E: see Chap. X.; or Sched. D: see pp. 175, 215, *infra*. Note that the privilege of occupying a residence rent-free by virtue of an office or employment of profit is not taxable income at all: *Tennant* v. *Smith*, [1892] A. C. 150, *infra*, p. 311.

(*u*) That is, income arising from the occupation of land: see Chap. III. See also *McKie* v. *Luck; Hawker* v. *Compton; Dickenson* v. *Gross*, cited *supra*, p. 12.

(*x*) In view of the words of limitation quoted, the great majority of cases of earned income charged under Sched. D must fall within Cases I. and II. of Sched. D: see Chaps. V. and VI.; but it is not inconceivable that some may fall within other Cases of that Schedule: see Chaps. VII., VIII., X. The words in sect. 14 (3) (c), "or the rules applicable to Schedule D," appear to have lost their effect, since concerns formerly charged under No. III. of Sched. A were transferred to Sched. D by sect. 28 of the Act of 1926, *infra*, p. 579.

(*y*) Finance Act, 1919, s. 22, *infra*, p. 527. See *M'Dougall* v. *Sutherland*, *infra*, p. 251.

(*z*) *Fry* v. *Shiels' Trustees*, [1915] S. C. 159; 6 Tax C. 583.

(*a*) *M'Dougall* v. *Smith* (1918), 56 S. L. R. 90; 7 Tax C. 134.

Where husband and wife are living together, the profits of either the husband or wife may be "earned income" (*b*), and if the wife herself has an earned income, the allowance will be calculated upon the aggregate of the earned incomes of husband and wife. In such a case an addition is also made to the personal allowance (*c*).

Incomes of Persons of Sixty-five.

A man or woman who was sixty-five years of age, and any man whose wife, living with him, was of that age, at the commencement of the year of assessment (that is, at 6th April), and whose total income for that year does not exceed 500*l.*, is entitled to a deduction of one-sixth of his total income in arriving at the assessable income and to a deduction of tax on that amount (*d*), in the same way as if the whole income were "earned income" (*e*). It is immaterial whether any part is in fact "earned income"; but if any of it is, there is no additional deduction (*f*). The total income for this purpose includes that of the wife (*g*). If the income is wholly or partly taxed by way of deduction at the source, repayment will be made (*h*).

Where the income is slightly above 500*l.* no more income tax will be payable than is equal to what would have been payable if the income had not exceeded 500*l.* together with half the amount by which the income exceeds 500*l.* (*i*).

Deductions for Dependants other than Wives (*k*).

In addition to the reliefs above described, the following deductions with regard to dependants other than wives are

(*b*) Act of 1918, s. 14 (3), *infra*, p. 408. As to assessment of husband and wife, *vide infra*, p. 278.

(*c*) *Vide supra*, p. 14.

(*d*) Act of 1925, s. 15 (2); Act of 1927, s. 40 (1), *infra*, pp. 571, 599. As to total income, see Chap. XIII. See examples (14) and (15), p. 16.

(*e*) As to the meaning of "assessable income," and the deductions to be made from it, *vide supra*, p. 14.

(*f*) Act of 1925, s. 15 (2), proviso.

(*g*) *Vide infra*, p. 278.

(*h*) As to claims for repayment, *vide infra*, pp. 353, 388.

(*i*) Sect. 15 (2), latter part.

(*k*) It has not been thought necessary to deal fully with these provisions in the text; reference should be made to the sections themselves.

allowed before arriving at the taxable income, and the tax payable is reduced by tax on the amount of the deduction, provided that no deduction is made from any other person's income in respect of the same dependant (*l*):—

A widower or widow who has a female relative (*m*), or (in the absence of any such relative) another female person, living with him or her to take care of any child (*n*), or as a housekeeper, a deduction of 60*l*. (*o*);

An unmarried man who has living with him and maintains his mother (if a widow or living apart from her husband), or some other female relative (*m*), to look after a child-brother or child-sister (*p*), a deduction of 60*l*. (*q*);

A person who has any child of his own or stepchild (*r*) living at any time within the year of assessment, a deduction of 60*l*. for the first child, and 50*l*. for each subsequent child; and a person who, for the year of assessment, has the custody of and maintains at his own expense any child, is entitled to the same deduction as if the child were his own; in either case, the child must not be entitled in his own right to an income exceeding 60*l*. a year (scholarships, bursaries, &c. being left out of account (*s*)), and, if the child is over sixteen, he must be receiving full-time instruction at an educational establishment (*t*);

A person maintaining at his own expense a relative (*u*) incapacitated by old age or infirmity, or his or his wife's

(*l*) Finance Act, 1920, s. 19 (1), provisoes (a), (b); s. 20 (b); s. 21 (2), *infra*, pp. 530 *sqq.*; Act of 1927, s. 40 (1), *infra*, p. 599.

(*m*) "Relative" includes a person who while under sixteen was in the custody of the claimant and was maintained by him at his own expense: sect. 33.

(*n*) "Child" (where the parent or step-parent is a claimant) includes a step-child and an illegitimate child whose parents have married each other after his birth; in any case the child must be under sixteen or be receiving full-time educational instruction, and must not have an income of his own exceeding 60*l*. a year: sect. 21 (1), (3), sect. 19 (2), sect. 20 (a); see note (*t*), *infra*.

(*o*) Act of 1920, s. 19, *infra*, p. 530; Act of 1924, ss. 22, 21, *infra*, p. 568.

(*p*) See note (*n*), *supra*.

(*q*) Act of 1920, s. 20; Act of 1924, s. 22.

(*r*) See note (*n*), *supra*.

(*s*) *Vide infra*.

(*t*) Act of 1920, s. 21 (1), (2), as amended by Act of 1928, s. 16, *infra*, p. 531; the deduction under sect. 21 (1) will be available though the child is born within the year. As to "full-time instruction," &c., see *Heaslip* v. *Hasemer* (1927), 44 T. L. R. 112.

(*u*) Of his or his wife's; and see note (*m*).

widowed mother, whether incapacitated or not, if the total income of the incapacitated relative or the widowed mother does not exceed 50*l.* a year, a deduction of 25*l.* in respect of each person so maintained; the deduction is to be apportioned, if the person is maintained jointly (*v*);

A person who by reason of old age or infirmity is compelled to depend upon the services of a daughter resident with him and maintained by him, a deduction of 25*l.* (*v*).

Scholarships, &c.

Income arising from a scholarship, exhibition, bursary or similar educational endowment held by a person receiving full-time instruction at a university, college, school or other educational establishment is exempt from income tax and super-tax, and is to be excluded in computing income (*w*).

Wounds Pensions, War Gratuities, &c.

Wounds and disability pensions (*x*) and war gratuities (*y*) are exempt from income tax. Allowances granted by the Minister of Pensions to widows in respect of their children are not to be reckoned in computing the incomes of the widows (*z*).

Life Insurance Premiums and Similar Payments.

A limited amount of relief is given by way of reduction or repayment of tax in respect of life insurance premiums and certain other payments of a similar kind (*zz*). This relief is admissible only to the individuals described above as being entitled to reliefs (*a*). The classes of premiums and payments which give rise to such relief are as follows: —

First (*b*), premiums paid for an insurance on a man or woman's own life or on that of his wife or her husband

(*v*) Sect. 22.
(*w*) Finance Act, 1920, s. 28, *infra*, p. 538.
(*x*) Finance Act, 1919, s. 16, *infra*, p. 525.
(*y*) Sect. 17, *infra*, p. 526.
(*z*) Act of 1922, s. 27, *infra*, p. 553.
(*zz*) Act of 1918, s. 32, as amended by Finance Act, 1920, s. 26, and Third Schedule.
(*a*) Act of 1920, s. 24 (1): *vide infra*, p. 532.
(*b*) Act of 1918, s. 32 (1) (a) and (8).

with any insurance company legally established in the United Kingdom or a British possession, or lawfully carrying on business in the United Kingdom, or with a registered friendly society (*c*). Such insurances include policies under which a sum is to be paid either on the death of the assured, or upon his attaining a certain age (*d*). But if the contract does not include the securing of a capital sum on death, no relief is in general given, unless the contract was made on or before 22nd June, 1916 (*e*). The relief is admissible whether the payment is made by the husband, or by the wife out of her separate income (*f*); and if they are separately assessed "as if they were not married" the relief is given to the party making the payment (*g*). The premium must, however, be payable by the person assured, or by his wife or her husband, as the case may be; an insurance by joint persons on their joint lives is not sufficient (*gg*), except, perhaps, where these persons are husband and wife.

Secondly, premiums paid "for" any contract for any deferred annuity on a man or woman's own life or the life of his wife or her husband with any such insurance company, with a registered friendly society or with the National Debt Commissioners (*h*). What is said in the last paragraph as to payments by husband or wife, and as to joint lives, applies here also.

Thirdly, sums paid by any person in fulfilment of a liability imposed by any Act of Parliament or by the terms and conditions of his employment, for the purpose of securing a deferred annuity to his widow, or provision for his children after his death (*i*).

(*c*) *Vide infra*, p. 296.

(*d*) *Gould* v. *Curtis*, [1912] 1 K. B. 635; [1913] 3 K. B. 84.

(*e*) Sect. 32 (3) (e) (ii). The meaning of "or other payments" in this paragraph is obscure: see *Turton* v. *O'Brien*, *infra*, 7 Tax C. per ROWLATT, J., at p. 175. See below for the specific exceptions contained in the proviso.

(*f*) Act of 1918, s. 32 (8), inserted by Finance Act, 1920, s. 26 (7).

(*g*) Finance Act, 1920, s. 25 (1) (c), proviso, *infra*, p. 533.

(*gg*) *Wilson* v. *Simpson*, [1926] 2 K. B. 500.

(*h*) Act of 1918, s. 32 (1) (a) and (8).

(*i*) Sect. 32 (1) (b); contributions to superannuation funds and contributions made to secure a gratuity on death are differently treated: *vide infra*, pp. 252 *sqq*.

Fourthly, sums deducted from any person's salary or stipend under such a liability and for such a purpose (*k*).

The premium, payment or deduction in any of these cases need not be an annual one; and payment under a single-premium policy affords a ground for relief; so also, it would seem, does a lump sum paid in commutation of future payments (*l*).

In a case of insurance (or of a contract for a deferred annuity) where the insurers receive only a part of the premium in cash and debit the assured with the remainder as a loan bearing interest, the assured is only entitled to relief in respect of the cash sum actually paid by him (*m*).

The application of these provisions is, however, modified as regards cases where the insurance or the contract for a deferred annuity has been made after 22nd June, 1916. Where such is the case no relief is to be given except in respect of premiums or other payments (*n*) payable on policies for securing a capital sum on death (whether in conjunction with any other benefit or not), and none is to be given in respect of premiums or payments payable during the period of deferment in respect of a policy of deferred assurance (*o*). There is an exception again to this exception: premiums or payments on policies and contracts in connection with such superannuation or pension schemes as are described in the proviso (*p*), and on certain policies taken out by teachers of secondary schools, are within the benefit of the section even if the insurances or contracts were made after 22nd June, 1916; but the rate of relief allowed is different in this case (*p*).

Relief in respect of life assurance premiums is not taken into account in calculating the amount of relief in respect of Dominion income tax (*q*).

(*k*) Sect. 32 (1) (b). See also pp. 252 *sqq.*, *infra*.

(*l*) Sect. 32 (1), as amended by Act of 1920, s. 26 (1), *infra*, p. 534. The contrary decision in *Turton* v. *O'Brien* (1919), 7 Tax C. 170, was given before the Act of 1920 was passed.

(*m*) *Hunter* v. *R.*, [1904] A. C. 161.

(*n*) See note (*e*) on p. 22.

(*o*) Act of 1918, s. 32 (3) (e) (ii), (iii).

(*p*) Sect. 32 (3) (e), proviso.

(*q*) Finance Act, 1920, s. 27 (8) (d), *infra*, p. 537.

Life Insurance, &c.: Extent of Relief.

Subject to certain specific restrictions, the reductions of tax are calculated as follows upon the premium paid or the sum paid or deducted, as the case may be:—

In the case of an insurance or contract made on or before 22nd June, 1916, tax at half the standard rate (*r*) where the total income from all sources does not exceed 1,000*l.*, at three-quarters of the standard rate where it exceeds 1,000*l.* but does not exceed 2,000*l.*, and at the standard rate where it exceeds 2,000*l.* (*s*); the allowance may be increased to a certain extent where the total income is so close to 1,000*l.* or 2,000*l.* as to cause hardship (*t*). In the case of an insurance or contract made after 22nd June, 1916 (*u*), whatever the amount of the total income, the allowance is at half the standard rate (*x*). Where an individual not resident in the United Kingdom is entitled to this relief, his total income for this purpose includes any part not liable to United Kingdom tax (*y*).

The amount of premium, &c. to which the standard rate, or a fraction thereof, is to be applied is restricted as follows: The amount must not exceed one-sixth (*z*) of the total income from all sources (*a*); in respect of any premium or other payment (*b*) payable on a policy for securing a capital sum on death (whether in conjunction with any other benefit or not) the amount must not exceed seven per cent. of the capital sum payable on death, excluding from such capital sum any bonuses, premiums returnable and other benefits

(*r*) *Vide supra*, p. 12.

(*s*) Act of 1918, s. 32 (1), as amended by Finance Act, 1920, s. 26. Where the standard rate is 4*s.* in the £, the appropriate rates for calculating relief in the cases stated are 2*s.*, 3*s.*, 4*s.*, and 2*s.* respectively.

(*t*) Act of 1918, s. 32, to which sub-sect. (9) was added by Finance Act, 1920, s. 26 (7).

(*u*) See *Barton* v. *Miller* (1922), 8 Tax C. 315.

(*x*) See note (*s*).

(*y*) Finance Act, 1920, s. 24 (1), proviso; *vide supra*, p. 13.

(*z*) Act of 1918, s. 32 (3) (a), as amended by Finance Act, 1920, Third Schedule.

(*a*) As to the meaning of this phrase, see Chap. XIII.

(*b*) The words "or other payment" seem to be superfluous: see *Turton* v. *O'Brien*, *supra*, p. 22, note (*e*).

and sums payable in any other contingency (*c*); in respect of premiums or payments to which the section applies and which are payable for securing any benefits in which a capital sum payable on death is not included (*d*), the amount on which the allowance is calculated must not exceed 100*l*. Where a bonus is applied in reduction of premium, the allowance is to be calculated on the net amount paid by the assured (*e*).

Life Insurance, &c.: Method of obtaining Relief.

The relief allowed by sect. 32 entitles the person in question to have the tax payable by him reduced by a sum representing tax calculated as has been indicated above (*f*). If, however, he has paid the tax without such reduction or has been charged with tax by deduction or otherwise, he is entitled to repayment (calculated in the same way), on a claim being made to the Special Commissioners, and on production of the receipt for his insurance premium or similar payment and proof of the facts to their satisfaction (*g*). Where the insurance is effected with a registered friendly society (*h*) and the premiums are made payable for shorter periods than three months, a certificate signed by an officer of the society showing the amount of premiums paid during the year must be produced; penalties are provided for giving or producing a false certificate (*i*).

Dominion Income Tax.

Provisions intended to relieve a person from having to pay upon any part of his income the full income tax (including sur-tax) chargeable in the United Kingdom, as well as the

(*c*) Act of 1918, s. 32 (3) (c). Where, as in *Gould* v. *Curtis*, [1913] 3 K. B. 84, *supra*, p. 22, 200*l*. is payable if the assured should survive to a certain date, and only 100*l*. if he dies earlier, the allowance will be calculated at the appropriate rate on seven per cent. of 100*l*.

(*d*) This appears to be the effect intended by sect. 32 (3) (d).

(*e*) *Watkins* v. *Hugh-Jones* (1928), 7 A. T. C. 282.

(*f*) Act of 1918, s. 32 (1), as amended by Finance Act, 1920, s. 26.

(*g*) Sect. 32 (2), as amended by Finance Act, 1920, Third Schedule. It is doubtful whether the Special Commissioners have power to state a case: *Watkins* v. *Hugh-Jones, supra;* see Chap. XVII.

(*h*) *Vide infra*, p. 296.

(*i*) Sect. 32 (7).

full income tax and super-tax chargeable in a "Dominion" are contained in sect. 27 of the Finance Act, 1920, as amended by the Act of 1927 (*k*). They apply to cases where a reciprocal arrangement has already been made with a Dominion, as well as those where such an arrangement has not yet been made, but may be made in the future (*l*); and, while a general standard of relief from United Kingdom tax is provided at the outset, a provision still more favourable to the taxpayer as regards the United Kingdom tax is also enacted, to apply to cases where the Dominion as yet gives no relief.

These provisions are not confined to self-governing colonies; the word "Dominion" means any British possession or protectorate or any territory for which any Government in the Empire exercises a mandate (*m*); and "Dominion income tax" means "any income tax or super-tax charged . . . . in any Dominion, if that tax appears to the Special Commissioners to correspond with United Kingdom income tax" (*n*), which includes sur-tax.

This relief extends not only to individuals (*o*), but to companies and other bodies; and where these obtain the relief, they are bound in distributing dividends to hand on the benefit to the shareholders; that is to say, they may not deduct income tax at a rate exceeding that of the United Kingdom tax as reduced by this relief (*p*). This prohibition applies even where, as in the case of preference shares,

(*k*) Act of 1920, s. 27; Act of 1927, s. 46, 5th Sched., Part II., *infra*, pp. 534, 608. These amendments are designed in conformity with the amendments as to sur-tax and reliefs enacted in the Act of 1927.

(*l*) A "Digest of the Laws imposing Income Taxes in the British Dominions" is now published by H.M. Stationery Office.

(*m*) Sect. 27 (8) (a), *infra*, p. 537. The application of these enactments in regard to the Irish Free State is subject to sect. 23 of the Act of 1926, and the agreement, &c. appearing in the 2nd Schedule to that Act, as amended by sect. 21 of the Act of 1928, and the further agreement set out in the 4th Schedule to the latter Act; *vide infra*, pp. 577, 613.

(*n*) See Act of 1920, s. 27 (8) (c), as amended by Act of 1927, 5th Sched., Part II. 2 (iii), *infra*, p. 537.

(*o*) See Act of 1918, General Rules, r. 1; and contrast with sect. 27 of the Act of 1920, ss. 16, 17, 23, 24 of the Act of 1918.

(*p*) Act of 1920, s. 27 (5), *infra*, p. 536. As to deduction of tax generally from dividends, *vide infra*, p. 264.

the dividend is payable at a fixed rate (*q*); and where one company holds shares in another company which obtains the relief, and which hands on that relief by making a smaller deduction of tax in distributing a dividend, or by distributing a larger dividend purporting to be "free of tax," the holding company which thus receives relief must also hand on the relief to its own shareholders (*r*). But if the result of handing on any Dominion tax relief by a company is that the individual has obtained relief at a higher rate than would have been the case if he had himself been charged with tax and claimed relief, the income tax authorities may adjust the matter (*s*) in connection with the relief with regard to the first 225*l*. of the taxable income (*t*).

No relief is granted unless the Dominion income tax has been actually paid, by deduction or otherwise; it is not enough that the tax is payable. The Commissioners of Inland Revenue are to prescribe by regulation what year is to be taken for the Dominion income tax as corresponding to the United Kingdom year of assessment (*u*). The Dominion income must also be subject to United Kingdom tax; if it is not so taxable there can be no relief (*x*).

The relief ascertained according to the general standard is given by way of diminution of the income tax charged, or if the claim has not been established before 1st January in the year to which it relates (that being the day when income tax first becomes due (*y*)) by way of repayment (*z*). In either case the whole amount of reduction or repayment is allowed against income tax proper, and not against

(*q*) *Sheldrick* v. *South African Breweries, Ltd.*, [1923] 1 K. B. 173.

(*r*) *Gold Fields American, &c. Co., Ltd.* v. *Consolidated Gold Fields, &c., Ltd.*, [1926] Ch. 338; as to the real nature of a dividend paid "free of tax," *vide infra*, p. 265.

(*s*) Sect. 27 (3), as amended by Act of 1927, 5th Sched., Part II. 2 (ii), *infra*, p. 535; see also sect. 40 (2), proviso. This sub-section perhaps covers other special cases also.

(*t*) See Act of 1927, s. 40 (1); *et vide supra*, p. 15.

(*u*) Act of 1920, s. 27 (7) (b), *infra*, p. 537.

(*x*) *Rolls-Royce, Ltd.* v. *Short* (1925), 41 T. L. R. 620; the principle of that decision holds good, though exactly similar facts cannot recur since the abolition of the three years' average.

(*y*) *Vide infra*, p. 396.

(*z*) Sect. 27 (2).

sur-tax (*a*), even though the relief is based in part on payment of, or liability to, Dominion super-tax.

As relief is in general to be thus obtained, it follows that it cannot also be given by way of excluding from the income estimated for the purpose of United Kingdom tax the amount of Dominion income tax that has been paid or borne; and the inclusion of that amount is provided for (*b*). But this is not so as regards the additional relief obtainable where there is no reciprocal arrangement with the Dominion (*c*).

Dominion Tax: Calculation of Amount of Relief.

In general, the relief given is at the rate of one-half the "appropriate rate of" United Kingdom income tax; but where the Dominion rate is one-half, or less than one-half, of the "appropriate rate," the relief is measured by the Dominion rate itself (*d*). Thus, if the United Kingdom appropriate rate is 6*s*. 6*d*. in the £, and the Dominion tax 3*s*. 6*d*., the rate of relief will be 3*s*. 3*d*.; if, however, the Dominion tax is 2*s*., the rate of relief will be 2*s*. only. The "appropriate rate" of United Kingdom tax and the "Dominion rate" are both calculated by dividing the amount of tax payable in the United Kingdom or paid in the Dominion, as the case may be, by the amount of the total income (*e*), or the Dominion income, on which it is charged (*f*). The tax payable includes sur-tax in the United Kingdom and any super-tax in the Dominion; but, as regards sur-tax, the amount payable in the preceding year is taken, and is divided by the total income of the preceding year (*g*). Again, the tax payable in the United

(*a*) Act of 1927, s. 42 (6), *infra*, p. 601.

(*b*) Act of 1920, s. 27 (4), *infra*, p. 535. (*c*) *Vide infra*, p. 30.

(*d*) Act of 1920, s. 27 (1), as amended by Act of 1927, 5th Sched., Part II. 2 (i), *infra*, p. 534.

(*e*) See Chap. XIII.

(*f*) Act of 1920, s. 27 (8) (d), as amended by Act of 1927, 5th Sched., Part II. 2 (iv), (v), *infra*, p. 537. *E.g.*, in ex. (12) on p. 16 the tax is 152*l*. 10*s*. and the income 875*l*.; the appropriate U. K. rate is 3*s*. 5·82*d*. in the £.

(*g*) See Chap. XIII. A special provision is made for the year 1928-29 in the Act of 1927, 5th Sched., Part II. 2 (v), last para.

Kingdom is ascertained without deducting any relief granted in respect of life assurance premiums (*h*) or granted under this section; but the relief given in respect of other amounts by deduction of the whole tax payable thereon is to be deducted, and such amounts are to be excluded from total income for this purpose (*i*). Where the Dominion tax is charged on an amount other than ascertained actual profits, it is left to the Special Commissioners to determine the Dominion rate for the purposes of this section.

The rate of relief thus calculated is applied to any part of the income liable to United Kingdom income tax in respect of which Dominion income tax has been paid for the same year; and the result is the amount of the relief to which the person is entitled (*k*).

By the phrases "any part of his income" and "the same part of his income," it is apparently not intended to restrict the relief so that it should always be calculated on the same amount as that on which the Dominion tax has been paid (*l*). The taxable profit may be arrived at upon different methods in the two countries; and what appears to be intended is that the income derived from a source, the income from which has paid Dominion tax in the year, shall afford a ground for relief although the income from that source may be estimated at a larger sum for United Kingdom tax than for Dominion tax. Thus, if that income is estimated for Dominion tax at 600*l.* and for United Kingdom tax at 1,000*l.* and the Dominion tax is 1*s.* 6*d.*, the relief will be 1*s.* 6*d.* on 1,000*l.*; if it is estimated for Dominion tax at 900*l.* and for United Kingdom tax on 300*l.*, the relief will be 1*s.* 6*d.* on 300*l.*

(*h*) *Vide supra*, p. 21. Any relief granted under sect. 32 (1) (b) in respect of payment or deduction of a sum under an Act of Parliament or under the terms of employment is apparently to be deducted, in arriving at the amount of tax payable.

(*i*) Act of 1927, s. 40 (1), 5th Sched. Part II. 2 (iv), *infra*, pp. 599, 608; and see pp. 11—21, *supra*. The further deduction of half-tax on 225*l.*, or a smaller amount, is not affected by Dominion tax relief: see sect. 40 (2) and proviso; *et vide supra*, p. 15.

(*k*) Finance Act, 1920, s. 27 (1). Income on which any of the reliefs included in sect. 40 (1) of the Act of 1927 is granted does not form part of the income for this purpose: 5th Sched., Part II. 2 (iv).

(*l*) See Report of Royal Commission, paras. 74, 75.

In the case of a company which applies a part of its profits in paying debenture interest, and deducts United Kingdom income tax in doing so (but not Dominion tax), the relief is calculated upon the whole amount of the profits that are subject to Dominion tax, without deducting therefrom the debenture interest (*m*).

Additional relief where there is no reciprocal arrangement.

In the Report of the Royal Commission (*n*) it was recommended that the relief given by the United Kingdom should not exceed half the rate of the United Kingdom tax, and that any further relief necessary in order to confer relief amounting in all to the lower of the two taxes should be given by the Dominion. What has been called above the general standard of relief is set up on the assumption of such reciprocity. But where the laws in force in any Dominion make no provision for the allowance of relief in respect of United Kingdom tax, an additional relief is given in this country (*o*). The difference between the amount of the Dominion income tax paid or payable and the total amount of the relief granted from United Kingdom tax in accordance with the general standard is deducted in estimating the income for the purpose of the United Kingdom tax; the period to be taken for the purpose of ascertaining the total amount granted is the same period as that on the income of which the assessment to United Kingdom tax is computed. Note that here the income to be charged is itself reduced and not merely the amount of tax leviable on that income; and further, that the amount to be deducted is the difference between Dominion income tax and United Kingdom relief, and not the amount of income on which the Dominion tax is charged.

Dominion Income Tax: Claim for Relief: Appeal.

Notice in writing of any claim for relief in respect of Dominion tax by a person resident in the United Kingdom

(*m*) *I. R.* v. *Dalgety & Co., Ltd.* (1929), 45 T. L. R. 536.
(*n*) Para. 70.
(*o*) Act of 1920, s. 27 (4), proviso (b).

is to be given to the surveyor of taxes, and by a non-resident to the Commissioners of Inland Revenue (*p*). No time is limited for giving such notice; and if the claim to relief is not established before the 1st January in the year to which it applies, the relief is not lost, but is to be granted by way of repayment (*q*). Where the Inland Revenue authorities raise any objection to the claim, the claim is to be heard and determined by the Special Commissioners as if it were an appeal (*r*), with all the incidents of an appeal, including the power of either party to require a case to be stated on a point of law. The Special Commissioners in hearing the appeal have power to determine the rate (*s*) and amount of relief, and all other incidental questions.

(*p*) Finance Act, 1921, s. 28, *infra*, p. 541.
(*q*) Act of 1920, s. 27 (2), *infra*, p. 535.
(*r*) See Chap. XVII.
(*s*) *Vide supra*, p. 28.

CHAPTER II.

LANDLORD'S PROPERTY TAX: SCHEDULE A.

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Tax charged under Schedule A.

By the opening words of Schedule A, income tax under that schedule "shall be charged in respect of all lands, tenements, hereditaments and heritages in the United Kingdom, for every twenty shillings of the annual value thereof" (*a*). The word "property" is not to be read in any technical sense so as to restrict the persons chargeable to the owners of the lands, &c.; they include any person who has a right of occupation or of ownership which gives that person the benefit of the annual value (*b*).

But Schedule A no longer extends to *all* lands, tenements, hereditaments and heritages. In the first place, they must be "capable of actual occupation" (*c*). Further, certain highly important exceptions are made by the transfer to

(*a*) *Infra*, p. 473.

(*b*) *Shanks* v. *I. R.*, [1929] 1 K. B. 342; see especially per Greer, L.J., at p. 361.

(*c*) General Rule No. I., *infra*, p. 474; the sweeping words which follow lose much of their force by reason of the exceptions. That rule does not, it is true, apply within the county of London; but, as far as the classes of property included are concerned, the saving clause applicable to London, by its reference to valuation lists (see p. 47, *infra*), appears to have a similar effect. The difference lies in the method of estimating annual value.

Schedule D of the properties mentioned in No. II. and No. III. of Schedule A (*e*). Schedule A still includes tithe rentcharges confirmed under the Tithe Act, 1836 (*f*), but (apart from these) it no longer applies to—

tithes taken in kind (*g*);

dues and money payments in right of the church or by endowment, or in lieu of tithes (not being tithes arising from lands), and all teinds arising in Scotland;

tithes arising from lands, if compounded for, and all rents and other money payments in lieu of tithes arising from lands;

manors and other royalties, including all dues and other services or other casual profits (not being rents or other annual payments reserved or charged);

fines received in consideration of any demise of lands or tenements (*h*) (not being parcel of a manor demisable by the custom thereof);

all other profits (other than those liable to deduction of tax in payment of rent or any other annual sum to which the lands, &c. are subject (*i*)) arising from lands, &c. not being in the actual possession or occupation of the person to be charged.

The above are now chargeable under Case III. of Schedule D (*k*).

Further, properties of the following kinds, when carried on with a view to profit (*l*), are now charged under Case I. of Schedule D, and not under Schedule A (*m*):—

quarries of stone, slate, limestone or chalk;

(*e*) Act of 1926, s. 28 and 3rd Sched., *infra*, pp. 579, 587.

(*f*) These are excepted from the operation of rule 3 of No. II.; *vide infra*, p. 62, note (*d*).

(*g*) The following list is taken from rules 1, 2, 3, 5, 6 and 7 of No. II. As rules 1 and 3 do not apply to the county of London, it may possibly be said that all tithes, and money payments in lieu of tithes, arising from lands in London, are still within Schedule A; but this seems doubtful.

(*h*) This does not apply to the ordinary premium, &c. paid for a lease or assignment: see *Davies* v. *Abbott*, *infra*, p. 46.

(*i*) Sched. A, No. VIII., rules 1, 4; *vide infra*, pp. 55, 59.

(*k*) Act of 1926, s. 28 and 3rd Sched. See Chap. VII., *infra*, p. 215.

(*l*) *Infra*, p. 38. (*m*) See note (*k*). These are dealt with in Chap. VI.

mines of coal, tin, lead, copper, mundic, iron, and other mines;

ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of the like nature (*n*).

The transfer of such concerns to Schedule D does not prevent lands used in connection with them, which form separately assessable units, from being assessed under Schedule A, such as, for instance, the town receiving-offices of a railway (*o*).

The term "landlord's property tax" is often applied to the tax charged under Schedule A, or (according to the context) to so much (*p*) of that tax as is ultimately borne by the landlord, even though the property be occupied by a tenant who pays the tax in the first instance.

Where a trade is carried on upon any premises in respect of which income tax is payable under Schedule A, a further assessment is made under Schedule D in respect of the profits of such trade (*q*); in computing those profits, allowance is made for the annual value of the premises (*r*).

Exemptions and allowances conferred upon charitable and other bodies in respect of tax under Schedule A are dealt with in Chapter XIII.

General Rule.

By the general rule for estimating the annual value of lands, &c., "the annual value shall be understood to be:—

"(1) The amount of the rent by the year at which they are let, if they are let at rack-rent and the

(*n*) Sched. A, No. III., rules 1, 2, 3, *infra*, p. 475. The exact effect of these rules and the properties which are by their operation excluded from Schedule A are considered *infra*, pp. 38, 83, 153.

(*o*) The transfer brings this matter within the rules applying to the annual value of business premises, considered *infra*, p. 143. As to what forms a separate unit for Schedule A purposes, *vide infra*, p. 35.

(*p*) See note (*i*), *supra;* and cf. *R.* v. *Goodchild* (1857), 27 L. J. M. C. 233, per COLERIDGE, J., at p. 242.

(*q*) *St. Andrew's Hospital* v. *Shearsmith* (1887), 19 Q. B. D. 624, *infra*, p. 83; *Coman* v. *Rotunda Hospital Governors*, [1921] 1 A. C. 1, *infra*, p. 79.

(*r*) *Vide infra*, p. 143.

amount of that rent has been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment; or

"(2) If they are not let at a rack-rent so fixed, then the rack-rent at which they are worth to be let by the year."

Within the Administrative County of London the valuation list in force under the Valuation (Metropolis) Act, 1869, is conclusive for the purposes of income tax; and this rule accordingly does not apply to lands included in that list (*s*).

There is no general direction as to the unit of lands, &c. that is to be taken for assessment purposes. But, speaking generally, any lands, &c. to be assessed as a unit must form a single property and be in a single occupation, although the property may be that of joint owners or the occupation that of joint occupiers. The specific direction for separate assessments in the case of a house "divided into distinct properties" distinctly occupied, like many other of the rules in Schedule A, is merely an obvious application of this unexpressed principle (*t*). An exception is, however, made where different apartments or tenements in a house or building are separately occupied; the house or building is to be assessed as a whole (*u*); but it has been decided that the annual value of each apartment or tenement is to be ascertained separately and the sum of these values to be taken as the annual value of the whole (*x*).

Actual Occupation.

In order to be assessable under Schedule A the property must be "capable of actual occupation" (*y*); and occupation for this purpose has the same meaning as for purposes of

(*s*) The relevant provisions of that Act are dealt with, *infra*, p. 47.

(*t*) Sched. A, No. VII., r. 12, *infra*, p. 486.

(*u*) No. VII., r. 8 (c), *infra*, p. 485.

(*x*) *Williams* v. *Sanders*, [1927] 2 K. B. 498; see, however, *Norwich Union* v. *Embleton* (1927), 137 L. T. 415.

(*y*) *Vide supra*, p. 32, note (*c*).

poor rate (*z*). A sewer provided by a local authority in the discharge of its public duties and without any possibility of profit was held to be assessable (*a*), and although such sewers are now specifically exempted, the same principle would doubtless be applied to any other municipal undertaking which could be described in similar terms. Tithe commutation rentcharge is taxable under the General Rule, though it can hardly be said to be capable of actual occupation (*b*).

Where minerals have not yet been won, although included in a mining lease, the lessees are not the occupiers of the minerals (*c*); and it may be doubted whether unwon minerals are "capable of actual occupation."

Occupation by the Crown or for Crown purposes.

The Crown is not liable to income tax, and consequently no income tax is leviable under Schedule A or otherwise in respect of buildings used for the purposes of the general administration of the country (*d*), even though they be provided by county or other authorities and not by the State at large.

In the leading case upon the subject (*e*) Lord BLACKBURN said: "There may well be expressions in an Act imposing a duty or tax on the subject such as to shew that the intention of the Legislature was to impose the duty on some property belonging to the Crown. But I do not think it

(*z*) *Coomber* v. *Berks JJ.* (1883), 9 A. C. 61, *infra; Back* v. *Daniels,* [1925] 1 K. B. 526; and the case next cited.

(*a*) *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted,* [1907] A. C. 264, *infra,* pp. 38, 303. For the exemption, see Act of 1921, s. 34, *infra,* p. 545.

(*b*) *Stevens* v. *Bishop* (1887), 19 Q. B. D. 442, per A. L. SMITH, J., at p. 444; 20 Q. B. D. 442, per ESHER, M.R., at p. 447, *infra,* p. 62. As to other forms of commuted tithe, &c., *vide supra,* p. 33.

(*c*) *Hill* v. *Gregory,* [1912] 2 K. B. 61, *infra,* p. 48; payments for the right to remove dross or spoil are not assessable: *Roberts* v. *Belhaven's Exors.,* [1925] S. C. 635, *infra,* p. 238.

(*d*) Tax is frequently assessed under this Schedule on the lessor, where buildings are occupied by the Crown under leases; see, *e.g.*, *Lewis* v. *Elgy, infra,* p. 48, note (*v*). The legality of this practice has not been tested.

(*e*) *Coomber* v. *Berks JJ.* (1883), 9 A. C. 61, at pp. 66, 67. See also *Tunnicliffe* v. *Birkdale Overseers* (1888), 20 Q. B. D. 450.

made out that there is any such intention shewn in the Income Tax Act. [His Lordship then quotes the opening words of the General Rule (*f*).] But I do not think this can be construed as taking away the exemption, by virtue of the prerogative, of property actually occupied or enjoyed by the Crown. . . . . The administration of justice, both criminal and civil, and the preservation of order and prevention of crime by means of what is now called police, are among the most important functions of Government, ... by the constitution of this country these functions do, of common right, belong to the Crown."

Lord WATSON says, in the same case (*g*), "The exemption of the Crown . . . . takes effect in all cases when the Crown is not named in the statute, or, I should prefer to say, in all cases where the enactments do not take away the privilege, either in express terms or by plain and necessary implication. . . . . The existence of the same kind and degree of interest, on the part of the Crown, which is deemed in law sufficient to protect an occupier from liability to the poor-rate, must also be held sufficient to shield the owner of the bare legal estate against any demand for the payment of income tax. . . . . I therefore think that the cases in which it has been decided that the actual occupiers of assize courts are exempt from poor-rate, as being within the privilege of the Crown, are decisions of equal authority in a question as to exemption from income tax."

It will be seen from that decision that the numerous poor-rate cases (*h*) upon this matter are conclusive also as to income tax. The actual hereditament with which that case was concerned consisted of assize courts and a county police station (with accommodation for constables as well as prisoners) provided by county justices out of county rates (*i*). In an earlier case, a dwelling-house so provided in which a police constable was compelled by the terms of

(*f*) *Vide supra*, p. 32.

(*g*) 9 A. C. at pp. 76, 77.

(*h*) See Ryde on Rating.

(*i*) *Coomber* v. *Berks JJ.* (1883), 9 A. C. 61. A Scottish decision to the contrary effect with regard to county police stations (*Clerk* v. *Dumfries Commissioners of Supply* (1880), 7 R. 1157; 1 Tax C. 281) was disapproved.

his appointment to live and which communicated with a police station, was held not to give rise to the liability to income tax (*k*).

On the other hand it has been held that this exemption does not extend to municipal buildings (except such part of them as is used for a burgh court), baths, and a weights and measures office (*l*), and that where a part of such buildings was used only exceptionally and accidentally for the purposes of a Court of Justice, that part was not exempt (*m*). Income tax is payable in respect of a county lunatic asylum, because provision for the custody and maintenance of pauper lunatics is not the exercise of a prerogative of the Crown, nor the discharge of a duty which appertains to the public government of the county (*n*).

A specific rule imposes on officers of the Crown who are paid in part by the privilege of occupying a house, tenement or apartment belonging to the Crown (other than apartments in royal palaces) the liability to income tax on the annual value thereof (*o*).

Property not carried on for Profit.

A list is set out above of various classes of property which are enumerated in the rules of No. III., and which have now been transferred from Schedule A to Schedule D. But although a particular property may *primâ facie* answer a description appearing in these rules, it is not included in No. III. unless it is carried on for profit (*p*); and, therefore, any such property which is not carried on with a view to profit is still chargeable under Schedule A. Consequently, a municipal slaughter-house where the dues were, in accordance with a local Act, so limited as to produce

(*k*) *Bent* v. *Roberts* (1877), 3 Ex. D. 66, *infra*, p. 49.

(*l*) *Adam* v. *Maughan* (1889), 27 S. L. R. 64; 2 Tax C. 541.

(*m*) *Brown* v. *Smith* (1901), 4 F. 31; 4 Tax C. 435.

(*n*) *Bray* v. *Lancashire JJ.* (1889), 22 Q. B. D. 484.

(*o*) Sched. A, No. VII. r. 11. See per Lord BLACKBURN in *Coomber* v. *Berks JJ.*, 9 A. C. at p. 66; and contrast *Tennant* v. *Smith, infra*, p. 311.

(*p*) *Ystradyfodwg, &c. Main Sewerage Board* v. *Bensted*, [1907] 1 K. B. 490; affd., [1907] A. C. 264, *supra*, p. 36. *Vide infra*, pp. 83—87.

no surplus above the current expenses together with interest on the cost of construction (*q*), and a waterworks vested in trustees to supply water to a city, where the charges made were not sufficient to cover current expenses, but the balance was met out of trust funds (*r*), were held to be chargeable under the General Rule No. I., and would, therefore, still be within the scope of Schedule A. Sewers for public health purposes are now the subject of a specific exemption from tax(*s*), but this does not prevent sewage purification works (not carried on for profit) from being assessed under Schedule A (*t*). It is important in this connection to note that a public undertaking may be carried on with a view to profit, although the profits when made may be compelled by statute to be devoted to public purposes (*u*).

A quarry of stone, &c. which is worked by a landowner for the purposes of his own estate, is probably chargeable under Schedule A as not being carried on for profit (*x*).

Although they may be carried on with that view, brickfields are not mentioned in No. III., and are not of a like nature with any of the properties enumerated in rule 3; they were therefore assessable under the General Rule (*y*), and are still within Schedule A.

Annual Value.

The effect of the General Rule is that in respect of any land, &c. within the purview of Schedule A income tax is charged upon its annual value. The phrase "annual value," whether in income tax Acts, poor rate Acts, succession duty Acts, or wherever else it appears in connection with rating

(*q*) *Harris* v. *Edinburgh Corporation,* [1907] S. C. 1233; 5 Tax C. 271.

(*r*) *Shaw* v. *Lichfield Conduit Lands Trustees* (1920), 7 Tax C. 597. See also *Glasgow Water Commissioners* v. *I. R.* (1875), 2 R. 708; *Miller* v. *Glasgow Water Commissioners* (1886), 13 R. 489, *infra,* p. 84.

(*s*) Act of 1921, s. 34; *vide infra,* p. 545.

(*t*) *Summers* v. *Renfrew County Council,* [1925] S. C. 119; 9 Tax C. 216.

(*u*) *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 A. C. 81, *infra,* p. 120.

(*x*) See per COZENS-HARDY, L.J., [1907] 1 K. B. at p. 500; quarries of four different kinds are enumerated in rule 1 of No. III., *supra,* p. 33.

(*y*) *Edmonds* v. *Eastwood* (1858), 27 L. J. Exch. 209; *infra,* p. 46. This point was not definitely decided in that case; but the judgments would make it very difficult to argue the contrary.

or taxation, means the same thing, that is, a rack-rent (*z*) or the rent which a tenant can afford to give after retaining out of the value of the gross produce of the land sufficient to afford him a profit and interest on his capital, and to enable him to pay tenant's rates and taxes. "Rack-rent is only a rent of the full value of the tenement or near it" (*a*). It has been described as the amount of profit derived from the property by the landlord as such (*b*); but this statement requires modification for income tax purposes, because the annual value under the General Rule is ascertained without making any deduction for repairs (*c*), insurance (*d*) or renewals. "Annual value is but an hypothetical sum arrived at in a certain manner" . . . . It "is not an actual but an hypothetical sum" (*e*). It is ascertained on the same principles as the gross value for rating purposes, which is defined as "the rent at which a hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes and tithe commutation rentcharge, if any . . . ." (*f*).

Subject to the modification as to repairs, insurance and renewals, the numerous decisions upon "rateable value" for poor rate purposes are generally in point with relation to "annual value" under the General Rule of Schedule A (*g*). It is not proposed to deal in this book with

(*z*) In *Re Elwes* (1858), 28 L. J. Exch. 46, per WATSON, B., at pp. 47, 48.

(*a*) 2 Blackstone, Comm. 43.

(*b*) *Edmonds* v. *Eastwood* (1858), 27 L. J. Exch. 209, per WATSON, B., p. 214.

(*c*) Certain allowances for repairs are, however, made by way of reduction or repayment: *vide infra*, pp. 42—44. The increase of rent permitted by sect. 2 (1) (d) of the Rent Restrictions Act, 1920 (10 & 11 Geo. 5, c. 17), forms part of the annual value, though granted to meet the increased cost of repairs: *Biddle* v. *Morris*, [1924] 2 K. B. 490.

(*d*) *Turner* v. *Carlton*. [1909] 1 K. B. 932.

(*e*) *R.* v. *Special Commissioners of Income Tax, Ex parte Essex Hall*, [1911] 2 K. B. 434, per BUCKLEY, L.J., at p. 441; per KENNEDY, L.J., at p. 444. As to existing rents, see *infra*, pp. 45, 46.

(*f*) See Rating and Valuation Act, 1925, s. 68, which re-enacts earlier definitions. As to the exclusion of tenants' rates and taxes and tithe commutation rentcharge, &c. from annual value for income tax, see Sched. A, No. IV. rr. 1, 2 and 10, *infra*, p. 476. Scottish landlords are put in a similar position in this respect by Sched. A, No. V. r. 4; see *I. R.* v. *Scottish Central Electric, &c.*, [1928] S. C. 260; 13 Tax C. 331; *infra*, p. 144.

(*g*) See per Lord BLACKBURN in *Coltness Iron Co.* v. *Black* (1881), 6 A. C.

those decisions, which may be more profitably studied in Ryde on Rating, but only with the cases which have been decided upon annual value for income tax purposes.

As regards sporting rights, however, the poor rate standard is not altogether applicable; the matter is discussed in relation to Schedule B (*h*).

Drainage and Embankment Rates and Expenses: Land Tax.

Deductions are specifically allowed for drainage, fencing and embankment rates and assessments (*i*), and for expenditure privately incurred (on an average of 21 years) in the making or repairing of seawalls or embankments necessary for the protection or preservation of lands against encroachment of the sea or of tidal rivers (*j*). This provision has been construed very strictly so as to exclude any deduction for constructing embankments whose main object was to convert salt marshes into good agricultural land by excluding tidal water; the decision may perhaps be supported on the ground that the expenditure was of a capital nature, but hardly so upon the words of the rule itself (*jj*). No allowance is made for any private expenditure upon embankments against non-tidal rivers, or for the maintenance of even the arterial drainage of agricultural land (*k*).

Certain drainage authorities levy rentcharges in commutation of liabilities to repair embankments or maintain drainage channels; these rentcharges are not "rates" but

at pp. 330—334. But the actual rating valuation is not binding for income tax purposes outside London: *Walker* v. *Brisley* (1900), 4 Tax C. 254. See, however, *Gundry* v. *Dunham* (1915), 85 L. J. K. B. 417. As to London, *vide infra*, p. 47.

(*h*) *Vide infra*, p. 68.

(*i*) Sched. A, No. V. r. 1 (f), *infra*, p. 479.

(*j*) No. V. r. 1 (g).

(*jj*) *Hesketh* v. *Bray* (1888), 21 Q. B. D. 444, decided under Income Tax Act, 1842, s. 37.

(*k*) The whole of these deductions would be made for rating purposes: *R.* v. *Adames* (1832), 4 B. & Ad. 61; *R.* v. *Hall-Dare* (1864), 34 L. J. M. C. 17; but as the amount of private expenditure would there be deducted *after* ascertaining the gross estimated rental, the decision in *R.* v. *Hall-Dare* on that point does not apply to income tax, where the deductions are limited as stated in the text.

would probably be held to be "assessments" within the meaning of the rule first cited (*z*).

A deduction is also allowed for unredeemed land tax (*a*).

Repairs, &c.

There are two distinct rules under which an allowance is made in respect of lands charged under No. I. of Schedule A to meet the cost of repairs.

One of these rules is general, and applies to all lands so charged (*b*). The allowance is not in terms made dependent on the necessity for repairs. The assessment is directed to be reduced "for purposes of collection"; but the limitation imposed by the words quoted is more apparent than real. The effect is that the tax-payer is only liable to pay Schedule A tax on the reduced amount; the reduced amount is deemed to be his income from the property for the purpose of any relief (*c*), and therefore for the purpose of sur-tax (*d*); and a tenant occupier can only deduct against his landlord tax on the reduced amount (*e*).

An owner can deduct against a mortgagee, chargee or annuitant (*g*) tax on the full amount of the assessment without taking account of this reduction (*h*).

In the case of "lands," where the assessment includes a farmhouse or farm buildings, or where it includes no house or building, the Sched. A assessment is reduced by $\frac{1}{8}$th (*i*) unless it is already more than $\frac{1}{8}$th below the rent (*k*). In other cases, where the owner is occupier or is chargeable as landlord (*l*), or where a tenant is

(*z*) Cf. *Green* v. *Newport Union,* [1909] A. C. 35.

(*a*) No. V. r. 1 (e). Such a deduction is not admissible for poor rate purposes: *R.* v. *Adames* (1832), 4 B. & Ad. at p. 68.

(*b*) Sched. A, No. V. r. 7, *infra,* p. 480.

(*c*) Sect. 19, *infra,* p. 409; *vide infra,* p. 310. (*d*) *Vide infra,* p. 308.

(*e*) No. VIII. r. 1, *vide infra,* p. 486. As to the amount of deduction for repairs of business premises in estimating trade profits, see p. 143, *infra.*

(*g*) *Vide infra,* p. 59.

(*h*) Sched. A, No. VIII. r. 11, *infra,* p. 488.

(*i*) No. V. r. 7 (1) (a). (*k*) Rule 7 (2).

(*l*) *Vide infra,* p. 54. Where the house or building is let in different apartments or tenements separately occupied, the aggregate annual value of the whole is treated as the amount of the assessment, and the reduction calculated accordingly: *Embleton* v. *Norwich Union, &c.* (1927), 137 L. T. 415; 11 Tax C. 681.

occupier and the landlord has undertaken to bear the cost of repairs, the reduction where the assessment does not exceed 40*l.* is $\frac{1}{4}$th, where it exceeds 40*l.* but does not exceed 100*l.* the reduction is $\frac{1}{5}$th, and where it exceeds 100*l.* the reduction is $\frac{1}{6}$th part of the excess *plus* 20*l.*; where a tenant is occupier and has undertaken to bear the cost of repairs the reduction is not to exceed a similar amount, but if the assessment is below the rent and the difference is greater than the authorised reduction if calculated on the actual rent, no reduction is allowed (*m*). Where the assessment is already more than $\frac{1}{4}$th, $\frac{1}{5}$th or $\frac{1}{6}$th below the rent, there is no reduction, whoever is the occupier (*n*).

In addition to the general reduction of assessment, the second of the rules referred to conveys relief in respect of certain classes of property, and covers other matters besides repairs (*o*). The assessment is not reduced, but repayment is allowed of excess tax paid. The repayment may be claimed in the same way as claims for any allowance or deduction (*p*); and may also be obtained by a declaration to the surveyor of taxes, if the surveyor is satisfied of its correctness (*q*). This additional relief further reduces the "total income" (*r*). Even if this relief has been obtained, it does not apparently reduce the amount of tax deductible by an owner against a mortgagee, chargee or annuitant (*t*).

This rule applies to any "land"—that is, agricultural land—"inclusive of farmhouses and other buildings (if any)," the Schedule A assessment of which is not more than $\frac{1}{6}$th below the rent, and to any "house" to which rule 7 applies (*u*).

(*m*) Rule 7 (1) (b), as amended with effect from 6th April, 1923, to 5th April, 1933, by Act of 1923, s. 28, and Act of 1928, s. 20, *infra*, pp. 566, 613; note the extended right of appeal given by sect. 28 (4) of the Act of 1923.

(*n*) Rule 7 (2), as so amended.

(*o*) Rule 8.

(*p*) *Vide infra*, p. 388.

(*q*) Rule 8 (5); see *R.* v. *Kingsland Commrs.* (1922), 8 Tax C. 327, *infra*, p. 376.

(*r*) Act of 1918, s. 19, *infra*, p. 409. See Chap. XIII.

(*t*) No. VIII. r. 4 (1), second proviso, allows the owner to deduct only the tax actually paid, but is silent as to any amounts repaid.

(*u*) No. V. r. 8 (3), read with r. 7 (2), as amended by sect. 25 of the Act of 1922, *infra*, p. 553; sect. 25 does away with the restrictions based on the annual value of houses.

The relief is given where the cost to the owner of maintenance, repairs, insurance and management has, on an average of five years, exceeded $\frac{1}{8}$th of the Schedule A assessment in the case of "land," and the reduction authorised by rule 7 (3) in the case of "houses" (*v*); but any expenses otherwise allowed as a deduction for income tax purposes cannot be claimed again (*w*). The comparison between expenses and assessment may be made for the whole of the land or houses in any estate which is managed as a whole (*x*); and the relief given is confined to the repayment of tax under Schedule A, paid in respect of the same "estate"; Schedule A tax in respect of another "estate," and Schedule D tax, cannot be repaid on this account (*y*). "Maintenance" includes replacement of farmhouses, farm buildings, cottages, fences and other works, where such replacement is necessary to maintain the existing rent (*z*); and also additions and improvements (made under compulsion of statute or bye-laws and without therefore increasing the rent) to farmhouses, farm buildings, or cottages (*a*). The average is computed on the five years preceding the year of assessment; and years ending on March 31st are taken unless the owner with the surveyor's consent adopts another date (*b*).

Loss by Flood or Tempest.

Where land is let at a rent without fine or premium, and by reason of flood or tempest loss has been sustained on growing crops or stock on the lands, or any part of them has been rendered incapable of cultivation for any year and the owner has consequently made an abatement of rent, the General Commissioners may make a corresponding reduction in the Schedule A assessment. A similar reduction may be

(*v*) No. V. r. 8 (1), as amended, *infra*, p. 481.

(*w*) Rule 8 (3), as amended by sect. 25 of the Act of 1922. Some part of the expenses may, for instance, have been deducted in estimating income from trade: *vide infra*, p. 145.

(*x*) No. V. r. 8 (4).

(*y*) *Crompton* v. *Campbell*, [1925] S. C. 124.

(*z*) Rule 8 (2).

(*a*) Act of 1924, s. 25, *infra*, p. 569.

(*b*) Sched. A, No. V. r. 8 (6).

made where the lands are in the occupation of the owner and any such loss is sustained on them (*c*). Penalties are provided in the case of fraudulent claims (*d*).

Existing Lease or Agreement not Conclusive.

Clause (1) of the General Rule (*e*) is logically superfluous. The rent fixed by a recent agreement (as described in clause (1)) is to be taken as the annual value, if that rent is a rack-rent; if it is not, the matter is left at large by clause (2). The assessing authorities must therefore decide for themselves in each case whether the rent reserved is a rack-rent. Moreover, they cannot as a matter of common sense refuse to consider any existing agreement, although made before the period of seven years laid down in clause (1), for such an existing agreement is obviously relevant to the question what is the rack-rent at which the property is worth to be let by the year, though it may be entitled to less weight than a more recent agreement. In practice, however, the rule makes it difficult to establish in any case (what may very well be the fact) that the true annual value is less than the rent reserved by an agreement of the kind described. Where the rent reserved by such an agreement is a rent which varies in different years, it is not correct to take the rent payable in any one year as the annual value, but the price "commercially paid for the annual possession of the property" must be ascertained by averaging the rents, or otherwise (*f*). Where the landlord undertakes to pay rates and to pay for certain services (as in the common case of flats), the property is not let at a rack-rent, and clause (1) does not apply (*g*).

Existing agreements have been held not to be conclusive in the case of a letting by a mother to her son (*h*); in the case of a letting of a public-house by a brewer to a tied tenant,

(*c*) Rule 9 (1), (2). As to Sched. B, *vide infra*, p. 68.
(*d*) Rules 10, 11.
(*e*) Set out *supra*, p. 34. (*f*) *I. R.* v. *Dickson's Exors.*, [1928] S. C. 752.
(*g*) *Norwich Union, &c.* v. *Embleton, infra*, p. 46.
(*h*) *Stocks* v. *Sulley* (1899), 1 F. 1020; 4 Tax C. 98.

though the latter paid the same prices for liquor as the brewer's other customers (*i*); and in a somewhat obvious case where the so-called "rent" included annual payments for the use of horses, coaches, and harness (*j*).

Where a premium is paid for a lease, it is proper to add a sum representing the annual amount required to replace the premium at the end of the term, together with interest on the amount of the premium, and if the tenant has covenanted to do what would ordinarily be the landlord's repairs, the average cost of those repairs (*k*).

In a lease of brickfields, reserving a surface rent of 17*l.* 10*s.*, a fixed "brick rent" of 100*l.*, and an additional royalty or brick rent of 2*s.* per thousand bricks after the first million, the whole of these three kinds of rent added together were held to make up the annual value (*l*).

The rules under Schedule A contain various subsidiary directions on specific points with regard to the ascertainment of annual value (*m*). Among these, attention may here be drawn to the provision for the exclusion from annual value of any public local rates, taxes, or assessments which by law are charged upon the occupier, but which have been *bonâ fide* paid by the landlord, and of any composition for tithes so paid (*n*), and to the rule for the assessment as an entire house or tenement, of a house or building let in different apartments or tenements, and occupied by two or more persons severally (*o*).

Quinquennial re-assessment usual.

It is not usual to make a fresh assessment each year of annual values for the purposes of Schedule A. Except

(*i*) *Gundry* v. *Dunham* (1915), 85 L. J. K. B. 417; *supra*, p. 41.

(*j*) *Campbell* v. *I. R.* (1879), 7 R. 82.

(*k*) *Davies* v. *Abbott* (1927), 11 Tax C. 575.

(*l*) *Edmonds* v. *Eastwood* (1858), 27 L. J. Exch. 209.

(*m*) Those grouped under No. IV., *infra*, p. 476, are very obscure, and some of them seem superfluous.

(*n*) Sched. A, No. IV. rr. 1, 2. Rule 10, which is somewhat obscure, should be read so as not to conflict with rule 1 (a). The amount to be excluded is the amount actually paid by the landlord or owner in the preceding year: *Norwich Union, &c.* v. *Embleton* (1927), 137 L. T. 415; 11 Tax C. 681.

(*o*) Sched. A, No. VII. r. 8 (c); *vide infra*, p. 54.

in every fifth or sixth year, the annual Finance Act generally contains a provision such as appears in the Act of 1929, to the effect that the annual value of any property which has been adopted for the purpose of income tax under Schedule A or B in the past year shall be taken as the annual value for the current year (*p*), with a saving for the County of London, so that the quinquennial period thus brought about by implication outside London does not affect that which is specifically imposed within (*q*). An enactment in this form does not prevent the making of an additional assessment in respect of any particular land for the quinquennial income-tax year after the expiry of that year (*r*). An appeal may be brought in any later year of assessment in which the annual value previously fixed is adopted; such an appeal will be determined according to the circumstances of the later year (*s*).

Annual Value in the Metropolis.

It has already been stated that the General Rule does not apply in the Administrative County of London where the hereditament is included in a valuation list which is conclusive for the purpose of income tax (*t*). The Valuation (Metropolis) Act, 1869, now extends to the whole of the administrative county; and provides that the valuation list for the time being in force in any parish to which that Act extends shall "be conclusive evidence of the gross value of the several hereditaments included therein" for the purpose of "any tax assessed in pursuance of the Income Tax Act, 1842, and any Acts . . . . amending the same [such as the Act of 1918], on any lands, tenements and hereditaments, in all cases where the tax is charged on the gross value and

(*p*) Act of 1929, s. 1 (3), *infra*, p. 615.

(*q*) *Infra*, p. 48.

(*r*) *Gundry* v. *Dunham* (1915), 85 L. J. K. B. 417, *supra*.

(*s*) Act of 1923, s. 26 (1), *infra*, p. 565, which seems to get rid of the decision on this subject in *Turner* v. *Carlton*, *supra*, p. 40.

(*t*) Certain subsidiary rules indicated in the opening words under "Rules applicable to Schedule A" (*infra*, p. 473) are also prevented thereby from applying in London.

not on profits," and that in construing those Acts, "annual value shall be deemed to mean the gross value stated in such list" (*u*). This rule applies even though the premises are occupied under a lease by the Crown, and although the rent reserved is far higher than the gross value entered in the list (*v*). The valuation list for the time being in force may be a quinquennial list, or a composite of quinquennial and supplemental or provisional lists (*vv*).

Tax charged upon the Occupier.

The property tax assessed under No. I. of Schedule A is charged (but for a few exceptional cases (*w*)) on the occupier for the time being (*x*); and "any person having the use of any lands or tenements" is deemed to be the occupier (*y*). These words do not mean that a lessee who has not actually entered but is entitled to do so and to take that use when he chooses, is deemed to be the occupier (*z*). In spite, therefore, of the presence of Rule 2, the word "occupier" for the purpose of Schedule A bears the same meaning as in the law of rating, just as the word "occupation" does (*a*).

"The term . . . . appears to involve possession of a permanent character, such that trespass could be brought by the occupier with the enjoyment of a benefit from the land. . . . . Exclusive occupation does not mean the power of excluding everyone else from the land, but does mean the exclusive power of using the rights given him in the soil" (*b*).

(*u*) 32 & 33 Vict. c. 67, s. 45. The effect in practice of this provision is illustrated in *Rossdale* v. *Fryer*, [1922] 2 K. B. 303, *infra*, p. 60.

(*v*) *Lewis* v. *Elgy*, [1927] W. N. 200; 11 Tax C. 723. The question whether Schedule A tax was payable at all was not raised: *vide supra*, p. 36, note (*d*).

(*vv*) Sects. 46, 47; see *R.* v. *City of London Assessment Committee*, [1925] 1 K. B. 185.

(*w*) *Vide infra*, p. 54.

(*x*) Sched. A, No. VII. r. 1, *infra*, p. 484.

(*y*) Rule 2. In *Lewis* v. *Elgy* (see note (*v*), *supra*) the person assessed was an intermediate lessor.

(*z*) *Hill* v. *Gregory*, [1912] 2 K. B. at p. 69, *supra*, p. 36.

(*a*) *Back* v. *Daniels*, [1925] 1 K. B. 526, *vide supra*, p. 36; a mortgagee in possession who is in actual occupation is assessed and charged as an occupier, No. VII. r. 13 (1); but this would have been obvious without any specific provision.

(*b*) [1925] 1 K. B., per SCRUTTON, L.J., at pp. 542, 543.

The word "occupation" is not "satisfied by any form of 'use.' . . . . But 'use' in rule 2 of Schedule A, No. VII., like 'occupation' in Schedule B, means use which is capable of producing income. . . . . To give any other meaning to the statutory words 'use' and 'occupation' would be to run counter to the whole scheme of the Act, which is to tax income and nothing else" (*c*).

Thus, a potato grower who hires land from a farmer for a season with the sole right of growing potatoes upon it is an occupier of the land, though the farmer has contracted to plough and to supply part of the labour and may also be an occupier (*d*). If a house is vested in trustees, and they are bound to allow a particular person to reside in the house if he desires, then (according to the English Courts) that person so long as he resides there is the occupier (*e*); if, on the other hand, the beneficiary only resides in the house at the discretion of the trustees, and cannot let it, it has been held in Scotland that he is not in occupation of the house (*ee*). In the case of a servant or official who is compelled by the terms of his employment to reside on premises provided by the employer, and who resides there for the purposes of the employer, the latter is the "occupier" (*f*), unless he uses the premises (through the servant) for the purposes of the Crown (*g*). "Occupier" of course includes any owner who is in actual occupation; it is not the equivalent of "tenant."

Although, as will be seen (*h*), a tenant-occupier is given a right to deduct the tax paid by him against his rent, the

(*c*) Per Lord Clyde, L.P., in *I. R.* v. *Wemyss,* [1924] S. C. 284 at p. 296; 8 Tax C. 551 at p. 576.

(*d*) *Back* v. *Daniels, infra,* p. 67.

(*e*) *Shanks* v. *I. R.,* [1929] 1 K. B. 342.

(*ee*) *I. R.* v. *Wemyss, supra.* These cases arose in connection with total income, and are further considered, *infra,* p. 311, with other cases bearing on the same point, upon which the English and Scottish Courts have taken contrary views.

(*f*) *Bent* v. *Roberts* (1877), 3 Ex. D. 66; *supra,* p. 38; *Sutton's Hospital Governors* v. *Elliott,* [1922] 2 K. B. 1. See also *Tennant* v. *Smith,* [1892] A. C. 150, *infra,* p. 311.

(*g*) See *Coomber* v. *Berks JJ., supra,* p. 37.

(*h*) *Vide infra,* p. 55.

tax is the debt of the occupier and not that of his lessor; but the payment of his debt to the Crown discharges the occupier from so much of his debt to his lessor (*i*). The only effect of the words excepting property tax, which are so commonly found in covenants by tenants to pay rates and taxes, is to keep alive this right (*j*).

A servant of the Crown in occupation of a house, tenement, or apartment belonging to the Crown, is assessable in respect thereof (*k*).

Unoccupied Lands.

There is, however, a further provision that the tax "shall be charged on all lands, tenements and hereditaments, whether occupied at the time of assessment or not," subject to the duty of the General Commissioners, in the case of any "house" which is or becomes unoccupied, upon appeal to discharge the tax in respect of the period during which the house was unoccupied (*l*). Here the words "charged on" are used with a different meaning from that of the same words in Rule 1 of No. VII.; the person is "charged" in the sense that he is commanded to pay the tax, the land only in the sense that the property in it gives rise to the liability, and that its value affords the measure of the tax to be paid (*m*).

It is submitted therefore that the effect of this rule as far as non-occupation is concerned, is merely that the Inland Revenue authorities need not enquire, before making their assessment for the year, whether any of the lands, tenements

(*i*) *Beaufort* (*Duke*) v. *I. R.; I. R.* v. *Anglesey* (*Marquess*), [1913] 3 K. B. 48; *Northumberland* (*Duke*) v. *I. R.*, [1920] A. C., per Lord WRENBURY at p. 834; *Drughorn* v. *Moore*, [1924] A. C. 53, *infra*, p. 55.

(*j*) *Ibid.* per Lord CAVE, L.C., [1924] A. C. at p. 57.

(*k*) *Vide supra*, p. 38.

(*l*) No. VII. r. 4.

(*m*) There appears to be no intention of creating a "charge" in the sense of real property law; contrast the language of the statute discussed in *East London Waterworks Co.* v. *Kellerman*, [1892] 2 Q. B. 72; and see sect. 162 (1), *infra*, p. 451, which speaks of the "premises *in respect of* which the tax is charged." But this rule has been held to have the result of making any goods found on the land distrainable in respect of a default in paying the tax assessed under Sched. A, *vide infra*, p. 400.

and hereditaments assessed are occupied or not (*n*). If there is no occupier in fact, there will be no one liable either to pay the tax in the first instance or to bear it by deduction; for the Act makes no person liable to pay except the occupier (*o*); and Rule 7 of No. VIII., which authorizes deductions by a tenant occupier against his landlord for any tax which he has paid and which ought to have been paid before he entered, applies only to tax which ought to be, or to have been "paid by a former tenant or occupier" (*p*), *not* being a person who has "ultimately" to "bear" the tax (*q*).

"The tax on each assessment shall be levied on the occupier for the time being, without any new assessment, notwithstanding any change of occupation" (*r*); this rule is obviously inserted for convenience of administration, and bears out the view above indicated as to the object of Rule 4.

An occupier who quits is, however, "liable for the tax payable in respect of the period up to the date of . . . quitting . . . so far as such tax falls to be ultimately borne by him" (*s*); if he was the owner, he is liable for the whole tax for that period, and if he was a tenant at a rent less than the annual value, he is liable for so much of the tax as he would have no right to recover from his landlord (*t*). "Liable" in this proviso means liable to the Inland Revenue, for, in case of a difference with the landlord or the succeeding tenant, the General Commissioners are to settle the proportions due and levy them from the proper persons (*u*).

A further proviso makes it clear that there is no authority to levy upon an occupier for the time being any tax which

(*n*) It would be unsafe to draw any inference to the contrary from the presence in rule 4 of a specific provision with regard to "houses."

(*o*) No. VII. r. 1, *supra*, p. 48; see also r. 3, and see *Beaufort* (*Duke*) v. *I. R.*, [1913] 3 K. B. 48, *infra*, p. 55; and *Northumberland* (*Duke*) v. *I. R.*, [1920] A. C. 825, per Lord WRENBURY at p. 834.

(*p*) No. VIII. r. 7, *infra*, p. 485, takes the place of the substantive part of sect. 35 of the Act of 1853; see No. VII. r. 1, *supra*, p. 48.

(*q*) No. VII. r. 3, proviso (b), *infra*, p. 484, *vide* p. 53.

(*r*) No. VII. r. 3.

(*s*) Rule 3, proviso (a).

(*t*) *Vide infra*, p. 55.

(*u*) General Rules, r. 22 (1), *infra*, p. 523.

ought to have been levied upon and ultimately borne by a former occupier (*x*). It cannot be read so as to show (by exclusion) that a levy is authorized in every other case, *e.g.*, where there was no preceding occupier (*y*).

The enactment whose place it takes (*x*) was, however, treated as being so intended, in a case where business premises had been empty during the year of assessment and for a year or two previously, and a tenant had entered after the conclusion of the year; tax for the previous year was demanded from him; on his refusal a distress was levied, and was held in an action for wrongful distress to have been lawful (*z*). The hardship of the claim needs no demonstration (*a*); it is submitted that the decision has, at any rate, no application under the Income Tax Act, 1918.

Empty Houses.

The view has been put forward above that no tax is leviable in respect of any unoccupied lands, &c.; and reference has been made to the special provision as to houses (*b*). Even if that view is incorrect, Rule 4 appears to mean that, as regards a house, there shall be no liability for tax in respect of any period during which it is unoccupied. "House" here probably means a dwelling-house with its appurtenances; it *may* include a warehouse or counting-house (*c*); it can scarcely include any and every kind of building (*d*).

(*x*) No. VII. r. 3, proviso (b), taken (with little alteration) from the proviso to sect. 35 of the Act of 1853; its bearing is difficult to understand without its former context, which is now repeated in No. VIII. r. 7, *vide infra*, p. 57.

(*y*) See the remarks as to the interpretation of the Income Tax Acts in Chap. I. *supra*, p. 8.

(*z*) *Reading* v. *Chew* (1898), 3 Tax C. 625; the case was heard at Nisi Prius and is not, therefore, of very great authority. As to distress, see Chap. XVIII.

(*a*) There was no rule under which the tenant could have recovered the tax distrained for from the landlord, because the landlord had never been the occupier: *vide supra*, p. 49; and if the judgment was right, the Inland Revenue might have distrained upon the new tenant for two or three years' tax which he could not recover.

(*b*) No. VII. r. 4, *infra*, p. 484.

(*c*) In *Reading* v. *Chew*, *supra*, r. 4 appears to have been treated as having no application to a counting-house, stores, yard and workshop; but this may have been because there had been no "appeal."

(*d*) The expressions "dwelling-house with the buildings or offices belonging thereto," "house or building let in different apartments or tenements," "lands,

The words directing that the General Commissioners, on proof of that period, shall "upon appeal discharge the tax" in respect of it, are probably inserted so that an outgoer who has not been succeeded by another occupier may get his assessment reduced, and so that an incomer into an empty house may secure that no claim shall be made upon him (*g*). There is nothing to limit the time or manner in which the appeal is to be made; and the provisions with regard to appeal against assessments (*h*) cannot apply, for the person who desires to appeal (if he is an incomer) may have received no notice of the assessment. An incomer might also have difficulty in proving the exact period during which the house stood empty.

Change of Occupier.

An incoming occupier (whether owner or tenant) who immediately succeeds an occupying tenant is liable for the tax due from that tenant, so far as that tenant could have recovered it from his landlord and with the same right of recovery; he is not liable for any part of the tax which that tenant could not have recovered, as for instance, if he occupied at a rent less than the annual value; nor is an incoming occupier who succeeds an owner in occupation liable for any tax due from that owner (*i*). A tenant occupier, who being required to do so, has paid tax which ought to have been paid by a former occupier under this rule may recoup himself against his landlord (*k*).

houses or buildings," "house or tenement," "house, tenement or apartment," "house . . . divided into distinct properties," appear in rr. 8—12; but no argument can be based on analogy or contrast between rules so vaguely worded and so loosely connected.

(*g*) There may be circumstances in which it will be impossible for him to recoup any tax levied upon him for the "empty" period; see note (*a*).

(*h*) *Infra*, p. 373.

(*i*) No. VII. r. 3, and proviso (b) thereto; read with No. VIII. r. 7, *vide supra*, p. 51, and *infra*, p. 57. Although there are no words expressly to the purpose, it cannot be intended that if the former owner was entitled to recoup himself for part of the tax against, say, a mortgagee, that fact should cast any liability upon his successor. As to liability of heirs, executors, &c. in case of death, *vide infra*, p. 281.

(*k*) No. VIII. r. 7, *vide infra*, p. 57.

The proportions of tax due respectively from the occupier for the time being and any former occupier (including his executors, &c.) are to be fixed and levied by the General Commissioners in case of difference, and their decision is final (*l*). Where the occupation is divided after the making of the assessment, those Commissioners are also to determine the proportions due (*m*).

Landlord Charged in Certain Cases.

Where a dwelling-house with its appurtenances and the land occupied therewith is of less annual value than 10*l*. and is occupied by a tenant, where any lands and tenements are let for less than one year, and where a house or building is let in different apartments or tenements separately occupied, the landlord is to be assessed and charged (*n*). In the last case the house or building is treated as a whole; a landlord assessed for the whole building under Schedule A cannot also be assessed under Schedule D in respect of a trade carried on there by means of the "letting" of offices (*o*). If the landlord makes default, the tax can be levied from the occupiers (*oo*); in the case of the divided house or building, they can recoup themselves out of any subsequent payment of rent (*p*); in the other cases, only out of the next payment of rent (*q*). The landlord or the person immediately entitled to the rent is also charged where the house is let to the accredited minister of a foreign State (*r*).

Where the landlord or immediate lessor makes a request in writing on or before 31st July in any year, the Com-

(*l*) General Rules, r. 22 (1) (b) and (2), *infra*, p. 523.

(*m*) No. VII. r. 5, *infra*, p. 485.

(*n*) No. VII. r. 8, *infra*, p. 485. In this rule "landlord" presumably means the "immediate lessor," although rule 9 speaks of "landlord or immediate lessor." As to the annual value in the last case, see *Williams* v. *Sanders*, [1927] 2 K. B. 498, *supra*, p. 35; and as to deductions for repairs, see *Embleton* v. *Norwich Union* (1927), 137 L. T. 415, *supra*, p. 42.

(*o*) *Salisbury House Estates, Ltd.* v. *Fry*, [1929] W. N. 185, *infra*, p. 81.

(*oo*) Rule 8, proviso.

(*p*) No. VIII. r. 9, *infra*, p. 488.

(*q*) No. VIII. r. 8.

(*r*) No. VII. r. 10, *infra*, p. 486.

missioners may, if they think fit, assess him directly for any lands, houses, or buildings, and continue to do so until he cancels the request by notice in writing (*s*); on his default they may distrain on the premises or property (*t*), as well apparently as on the goods of the landlord. If the occupier pays the tax to avoid distraint, he may recoup himself out of any subsequent payment of rent (*u*).

Tenant's Right to Deduct Tax against Rent.

As the occupier is in general the person assessed, and liable to pay the tax under Schedule A, he is (if he is a tenant) allowed to deduct and retain the tax paid by him against his landlord (*x*), or against a mortgagee in possession, who is not in actual occupation (*y*), so far as it is proportionate to the rent reserved; if the annual value exceeds the rent, the tenant cannot deduct tax on the excess (*z*); and where the rent exceeds the annual value assessed, he can only deduct tax on that annual value (*a*). The rent must be an actual money rent, and the tenant has no right to deduct or recover the tax paid where a peppercorn rent is reserved, even though he has, in pursuance of a covenant, spent money on repairs (*b*).

A rent paid with the tax deducted is discharged as if it had been paid in full to the landlord (*c*). The tenant must have paid the tax before he can deduct it (*d*) and must produce the receipt, if required (*c*). The fact that the landlord

(*s*) Rule 9 (1) (2).

(*t*) Rule 9 (3); as to distraint, *vide infra*, p. 399.

(*u*) No. VIII. r. 10.

(*x*) Sched. A, No. VIII. r. 1, and second proviso, *infra*, p. 486. The debt to the Crown is that of the occupier, and not that of his lessor; see note (*i*) on p. 50, *supra*.

(*y*) No. VII. r. 13, *infra*, p. 486.

(*z*) This is not expressly stated, but it is to be gathered from the language of the rule, which is so applied in practice.

(*a*) Cf. *Rossdale* v. *Fryer*, [1922] 2 K. B. 303, *infra*, p. 60.

(*b*) *Drughorn* v. *Moore*, [1924] A. C. 53.

(*c*) No. VIII. r. 2, as amended by Act of 1926, s. 26; see *Beaufort* (*Duke*) v. *I. R.*, [1913] 3 K. B. 48, *supra*, p. 50; and *North London, &c. Co.* v. *Moy*, [1918] 2 K. B. 439, decided before the above amendment was made.

(*d*) *Barnes* v. *Kyffin*, [1916] W. N. 166, a decision at Nisi Prius.

is entitled to exemption (or to any allowance or deduction) does not affect the tenant's right to deduct (*f*).

For the purpose of deduction, the tax is to be calculated at the rates in force during the period when the rent was accruing due; in Scotland, as regards the rent due for the period ending 15th May, the rate of tax in force at the commencement of the period is to be applied (*g*).

The deduction must be made out of the first payment on account of rent made after the payment of tax (*h*), but if, on the passing of the Act imposing the tax for any year, there is found to have been a failure or deficiency in deduction, it may be made up out of the next payment of rent after the passing of the Act, or recovered as a debt (*i*). Apart from this, there is no right to deduct subsequently, or to recover by action (*k*).

If, however, the rent is paid in arrear, there is nothing to prevent a deduction of tax corresponding (of course at the proper rates) to the whole of the rent so paid; the right to deduct is not confined to the tax for the financial year in the course of which the rent is paid (*l*). Payment of the tax is a good defence in part to an action to recover rent (*m*); and a receiver, who has covenanted to pay four years' arrears of rent due from the company, fulfils his own obligation by paying those arrears less the sums paid by the company for tax under Schedule A (*n*).

(*f*) *Swatman* v. *Ambler* (1834), 24 L. J. Ex. 185; the landlord must claim repayment if he desires it, *vide infra*, pp. 353, 388.

(*g*) No. VIII. r. 1, and first proviso thereto; see next paragraph. This rule is not affected by sect. 39 (1) of the Act of 1927; see proviso (a), *infra*, p. 599.

(*h*) Rule 1; *Hill* v. *Kirshenstein*, [1920] 3 K. B. 556, *infra*, p. 202.

(*i*) Sect. 211 (2), *vide infra*, p. 202.

(*k*) *Denby* v. *Moore* (1817), 1 B. & Ald. 123; *Cumming* v. *Bedborough* (1846), 15 M. & W. 438; but if the landlord has distrained for the whole rent, the tenant may recover by action an amount equal to the tax paid by him, *Graham* v. *Tate* (1813), 1 M. & S. 609; see also *Lamb* v. *Brewster*, *infra*, p. 59.

(*l*) *Kirk* v. *Cunnington*, [1921] 3 K. B. 637.

(*m*) *Tinckler* v. *Prentice* (1812), 4 Taunt. 549; *Franklin* v. *Carter* (1845), 14 L. J. C. P. 241. For a case in which tax was allowed to be deducted on payment into Court, see *Baker* v. *Davis* (1813), 3 Camp. 474.

(*n*) *In re Sturmey Motors, Ltd.*, [1913] 1 Ch. 16; in the same case it was also decided that the receiver was entitled to make a deduction for income tax paid by himself, although he had already made a payment of rent subsequent to the payment of tax.

A tenant occupier who has been required to pay and has paid tax which ought to be or to have been paid by a former occupier (whether owner or tenant) is entitled to deduct and retain the amount paid out of any subsequent payment of rent (*o*); in this case he is not limited to make his deduction against the next payment of rent; it is not clear for what reason.

Arguing upon this rule, it has been held that *à fortiori* a continuing occupier is entitled, where he has failed to pay rent for one year, to deduct the tax paid for that year, against a payment of rent for the next year (*p*). If this reasoning were carried to its logical conclusion, the limitation in Rule 1 to deduction out of the next payment of rent must be discarded altogether; moreover, it ignores the words in that rule which limit the amount to that which represents the "rate or rates of tax in force during the period through which the said rent was accruing due." Bearing these words in mind, it is submitted that the true view is that, although the payment of rent in arrear does not prevent a deduction of tax (*q*), the tax paid for the period during which rent so paid accrued due can only be deducted against that rent when it is paid, and not against the rent accrued due in any subsequent period (*r*); and further that Rule 7 of No. VIII. must be read subject to Rule 1, and not *vice versâ*.

A statutory provision directing a tenant to make some payment (other than income tax) and deduct a corresponding amount from his rent does not alter the effect of the provisions above discussed; and therefore a tenant of licensed premises is entitled to deduct the tax on the whole

(*o*) No. VIII. r. 7, *supra*, p. 53. Where an outgoing tenant has paid the tax and handed the receipt to the incoming tenant (his assignees) it may be inferred that the latter has in effect paid the tax, *Clennell* v. *Read* (1816), 7 Taunt. 50.

(*p*) *In re Hayman, Ltd.* (*No.* 2), [1917] 1 Ch. 545; the receiver's occupation continued that of the company. An agreement made by the receiver was construed in the same way as that in *In re Sturmey, supra*, note (*n*).

(*q*) *Tinckler* v. *Prentice; Franklin* v. *Carter, supra.*

(*r*) The decision in *Kirk* v. *Cunnington, supra*, p. 56, goes no further than this; and the language used by LUSH, J., [1921] 3 K. B. at p. 642, appears to support the view above suggested.

of the rent payable by him, although he has, in compliance with the Licensing Acts (*s*), paid a portion of that rent to the Inland Revenue as compensation charge (*t*).

A lessor of the right to work minerals who pays by deduction or otherwise income tax on the rent or royalties received may obtain repayment of tax in respect of sums wholly necessarily and exclusively disbursed as expenses of management in the year for which the tax is paid (*u*). Any difference between landlord and tenant with regard to the deduction of tax is to be settled by the General Commissioners in the same manner as a difference between succeeding occupiers (*v*).

A landlord refusing to allow the deduction is subject to a penalty of 50*l*. (*x*).

As the tax deducted by a tenant forms part of the rent, the tax was held not to be deductible in arriving at the "annual rental of the settled land" for the purposes of sect. 13 (iv) of the Settled Land Act, 1890 (*y*).

Agreements to the Contrary void.

An agreement for the payment of interest, rent or other annual payment without the deduction of tax is void (*z*); that is, the particular stipulation is void, but the rest of the agreement is enforceable (*a*). A tenant has been held

(*s*) See Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 21 (3).

(*t*) *Hancock* v. *Gillard*, [1907] 1 K. B. 47; there is no conflict between this decision and that in *Beaufort* (*Duke*) v. *Inland Revenue*, [1913] 3 K. B. 48, *supra*, pp. 50, 55.

(*u*) Act of 1922, s. 26, *infra*, p. 553; the claim is to be made as under Act of 1918, s. 33: *vide infra*, p. 214.

(*v*) General Rules, r. 22 (1) (a) and (2), *vide supra*, p. 54.

(*x*) Rule 23 (1), *infra*, p. 523; *A.-G.* v. *Shield* (1858), 28 L. J. Ex. 49; see, however, *Lamb* v. *Brewster*, *infra*.

(*y*) *In re Fife's Settlement Trusts*, [1922] 2 Ch. 348; see now Settled Land Act, 1925, 3rd Sched. Part I. (xxv), proviso; and see note (*t*), *supra*.

(*z*) General Rules, r. 23 (2), *infra*, p. 523. This provision in its bearing on annuities, &c. is discussed *infra*, p. 203.

(*a*) In *Readshaw* v. *Balders* (1811), 4 Taunt. 57, a covenant to pay an annuity, and in *Fuller* v. *Abbott*, *ibid*. 105, a lease, were held good except for the stipulation to pay the annuity and the rent free of deductions; see also the cases cited on pp. 203—205, *infra*.

entitled to recover against his landlord income tax paid by him in accordance with a covenant that he should pay his rent in full and that his landlord would reimburse him (*b*); but it does not follow that the landlord would be allowed, under such an agreement, to recover the rent in full, if the tenant chose to disregard it and to pay the rent after deduction of tax.

The provision in question applies to marriage settlements, agreements to pay alimony, and so forth (*c*); but not to wills, for a testator is at liberty to fix the amount of an annual payment without reference to any other party (*d*). But the fact that the payment is made under a will does not defeat the right to deduct tax, unless the testator directs that no deduction shall be made (*e*).

Right to Deduct Tax against Annual Payments and Charges.

A rule of Schedule A (*f*) gives to a landlord, owner or proprietor who is charged or is liable to deduction under that Schedule, the right in his turn to deduct and retain tax on the payment (whether payable half-yearly or at any shorter or more distant period) of any "yearly interest, annuity, rent, rentcharge (whether under the Tithe Act, 1836, or otherwise) (*g*), fee-farm rent, rent service, quit rent, feu duty, teind duty (*g*), stipend to a licensed curate, or other annual payment reserved or charged upon any lands, tenements, hereditaments or heritages" (*h*). Interest paid by the year is included (*i*). The rule applies to persons against whom tax has been deducted by a tenant in paying

(*b*) *Lamb* v. *Brewster* (1879), 4 Q. B. D. 607.

(*c*) *A.-G.* v. *Shield, supra*; *Floyer* v. *Banks* (1863), 32 L. J. Ch. 610; cf. *In re Viscount Portman,* [1924] 2 Ch. 6; and see pp. 203 *sqq., infra.*

(*d*) *Lovat* v. *Leeds* (*Duchess*) (1862), 31 L. J. Ch. 503; *Festing* v. *Taylor* (1862), 32 L. J. Q. B. 41; *infra,* p. 189.

(*e*) See the cases cited *infra,* p. 190.

(*f*) No. VIII. r. 4, *infra,* p. 487; corresponding to the tenth rule of No. IV. of Schedule A in the Act of 1842, with some alteration of arrangement.

(*g*) As to tithes and payments in lieu thereof, *vide supra,* p. 33.

(*h*) No. VIII. r. 4 (2).

(*i*) Per Lord Davey in *London County Council* v. *A.-G.*, [1901] A. C. at p. 41.

his rent (*j*), by an occupier in paying a composition, rent or payment for tithes (*k*), and by any person in paying any of the annual sums above specified. A tenant or occupier of lands must not deduct against rent more than he has actually paid in respect of those lands (*l*), or more than his under-tenant has deducted in paying rent to him (*m*). The deduction is to be made at the standard rate of tax for the year in which the amount payable becomes due (*n*), except that in Scotland, as regards any payment due for the period ending 15th May, the tax is to be calculated at the rate in force at the commencement of the period (*o*). As in the case of a tenant-occupier, the deduction operates as a discharge of the amount deducted (*p*).

Tax payable on interest due to a mortgagee or creditor in possession under a mortgage, heritable bond or wadset, is to be allowed in any settlement of accounts thereunder (*q*); the mortgagor or debtor is to be credited with the tax due on the interest which the mortgagee or creditor has paid to himself out of the rents (*r*).

The above rules have been held (*s*) to provide completely for "deduction at the source" of tax against any person receiving a payment issuing out of any land assessed under Schedule A after the occupier (*t*) has been charged in the first instance; so that Rule 19 (1) of the General Rules (*u*),

(*j*) Rule 1, *supra*, pp. 55—58. (*k*) See note (*g*), *supra*.

(*l*) Rule 4, proviso; but if he is the owner he may for this purpose disregard the reduction allowed to him for maintenance, &c. under Rule 7 of No. V.; see No. VIII. r. 11, *infra*, p. 488.

(*m*) *Rossdale* v. *Fryer*, [1922] 2 K. B. 303, *supra*, p. 55.

(*n*) Act of 1927, s. 39 (1), *infra*, p. 599; as to "standard rate," *vide supra*, p. 2.

(*o*) Proviso (b) to sect. 39 (1) of the Act of 1927 preserves the first proviso to r. 4 of No. VIII.

(*p*) Rule 5, *infra*, p. 488; see pp. 50, 55, *supra*.

(*q*) No. VII. r. 13 (2), *infra*, p. 486.

(*r*) Per Lord DAVEY in *London County Council* v. *A.-G.*, [1901] A. C. at p. 41.

(*s*) *Rossdale* v. *Fryer*, [1922] 2 K. B. 303, in the K. B. D.; the judgment of SCRUTTON, L.J., in the C. A. proceeded on other grounds. See also *Hill* v. *Gregory*, [1912] 2 K. B. 61 at pp. 70, 71, *supra*, p. 48.

(*t*) *Vide supra*, p. 48.

(*u*) Set out *infra*, p. 521. Rule 19 will now, however, govern the deduction of tax assessed in respect of any of the sources of income grouped under No. II. which have been transferred to Schedule D: *vide supra*, p. 33. A separate rule applies to the concerns described under No. III.: see rule 4, *infra*, p. 475.

which *primâ facie* covers the same ground, is not applicable to the deduction of tax charged under Schedule A.

Upon the question, however, whether that tax when deducted under Schedule A can be retained or must be accounted for to the Revenue, the provisions of the General Rules have been held to prevail. The language of Rule 4 of No. VIII. of Schedule A, if considered by itself, would be wide enough to justify retention in any case where the payment is charged upon the lands, whether or no the tax was paid "out of profits or gains brought into charge"; but it has been decided by the House of Lords, in a case where the payment was charged in part upon lands owned and occupied by the payers, that they were not entitled to retain the tax assessed under Schedule A in respect of those lands, because they derived from the lands no actual income out of which to make the payment (*v*). Their Lordships did not discuss in any detail the relevant provisions (*x*); but the effect of their decision was to limit the operation of the rule under Schedule A by reading into it the rule which is now Rule 21 of the General Rules (*y*), and by allowing retention of the tax, only where the income out of which the payment is made is directly connected with the payment, and has itself borne tax either directly or by way of deduction. It is difficult to see how the General Rules can regulate the retention of the tax deducted if they do not regulate its deduction (*z*).

An owner's right to deduct is not affected by the fact that the annual value of the lands is reduced for the purposes of collection under Rule 7 of No. V. (*a*): and he may make his deduction as if he had paid or borne the tax on the full annual value (*b*).

(*v*) *A.-G.* v. *London County Council,* [1907] A. C. 131; the case is further considered *infra,* p. 198. See also *London County Council* v. *A.-G.*, [1901] A. C. 26. As to the effect of the tenth rule of No. IV. of the Act of 1842, the predecessor of rule 4 of No. VIII. in the Act of 1918, see per Lord Davey, [1901] A. C. at pp. 41, 42, and per Lord Macnaghten, [1907] A. C. at p. 137.

(*x*) Act of 1842, Sched. A, No. IV. Tenth Rule; s. 102; Customs and Inland Revenue Act, 1888, s. 24 (3); corresponding with Sched. A, No. VIII. r. 4, and General Rules, rr. 19 (1) and 21, *infra,* pp. 487, 521, 522.

(*y*) Now rule 4 of No. VIII. of Sched. A in the Act of 1918.

(*z*) See note (*s*) on p. 60, *supra.*

(*a*) *Vide supra,* p. 42.

(*b*) No. VIII. r. 11, *infra,* p. 488.

As to settlement of differences, as to the penalty for refusal to allow deduction, and as to the invalidity of any agreement against deduction, the same provisions apply as in the case of rent (*c*).

Tithe Rentcharge.

Tithe commutation rentcharges confirmed under the Tithe Act, 1836, are still taxable under Schedule A (*d*), and upon "annual value" as defined in the General Rule (*e*). In the case of tithe rentcharge, the necessary cost of collection must be deducted from the receipts before the annual value is arrived at (*e*); but it is probable that there ought also to be a deduction for the profit which would be required by any person becoming a yearly tenant of the rentcharge, because the annual value is the rack-rent at which the rentcharge "is worth to be let by the year" and "who ever heard of a man giving 100*l.* a year in order to get 100*l.* a year (*f*)?"

Further, allowances are made in respect of local rates (*g*), tenths, first fruits, duties and fees on presentation, procurations and synodals (*h*), and as to repairs of any collegiate church or chapel or of the chancel of a church by any ecclesiastical or collegiate body, rector, vicar or other person bound to repair the same (*i*). The last mentioned rule also applies to repairs of university colleges and halls. A deduction is allowed for unredeemed land tax (*k*). These allowances are made by repayment only, except that as to local rates, &c., where the owner is assessed, the deduction is made before arriving at the assessment (*l*).

(*c*) General Rules 22 and 23, *vide supra*, p. 58.

(*d*) Being excepted by rule 3 of No. II., they are not included in the transfer to Schedule D, *vide supra*, p. 33.

(*e*) *Stevens* v. *Bishop* (1887), 19 Q. B. D. 442; 20 Q. B. D. 442; as to the meaning of "annual value," *vide supra*, p. 39. As to London, *vide supra*, p. 47.

(*f*) Per Lord DUNEDIN in *Port of London Authority* v. *Orsett Union*, [1920] A. C. at p. 298.

(*g*) No. V. r. 1 (d), and No. VII. r. 7, *infra*, pp. 479, 485. Where the owner is assessed (see below), the amount paid in the preceding year is deducted; in other cases the amount paid in the year of assessment.

(*h*) No. V. r. 1 (a), (b).

(*i*) No. V. r. 1 (c).

(*k*) No. V. r. 1 (e).

(*l*) No. V. r. 3; No. VII. r. 7.

The vesting of a tithe rentcharge in Queen Anne's Bounty by virtue of Part II. of the Tithe Act, 1925, does not affect the amount on which income tax is payable in respect of it (*m*).

Certain deductions are allowed generally from the profits of clergymen and ministers of any religious denomination (*n*).

Tithe Rentcharge: Persons Chargeable.

The Commissioners may at their discretion assess either the person liable to make the payment (that is, the owner of the land out of which the rentcharge issues), or (if he makes a return) the owner of the rentcharge (*o*). The tax is paid by Queen Anne's Bounty in the case of any tithe rentcharge vested in them under Part II. of the Tithe Act, 1925, and is deducted by them from the sum payable to the incumbent (*m*).

If the tax is made upon the recipient of the payment or on the owner of the lands not being the occupier, the amount of the rentcharge must be deducted before arriving at the annual value in assessing the land itself (*p*).

If the owner of the lands is assessed, he may deduct tax in paying the rentcharge (*q*). And the recipient of a tithe rentcharge has a similar right to deduct tax in making any annual payment to which the rentcharge is subject, including a "stipend to a licensed curate" (*r*).

(*m*) 15 & 16 Geo. 5, c. 87, s. 8 (1), *infra*, p. 576.

(*n*) General Rules, r. 2, *infra*, p. 517.

(*o*) No. VII. rr. 6, 7, *infra*, p. 485; see *Stevens* v. *Bishop* (1888), 20 Q. B. D., *supra*, p. 62, per FRY, L.J., at p. 448; and see Tithe Act, 1891 (54 & 55 Vict. c. 7), s. 1 (1). This provision seems to render obsolete No. VII. r. 6 (a), which gives a discretion to assess the occupier of the lands, and No. VIII. r. 3, which gives him the right to deduct tax.

(*p*) Otherwise the tax on the payment would be assessed twice over; see also No. VII. r. 7 (2).

(*q*) No. VIII. r. 4 (1), (2), *supra*, p. 59.

(*r*) *Ibid.*; and cf. *R.* v. *Latchingdon Overseers*, [1922] 2 K. B. 14.

CHAPTER III.

INCOME TAX ON OCCUPATION OF LAND: SCHEDULE B.

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Scope of Schedule B.

THE tax as charged under Schedule B is a tax in respect of the occupation of certain classes of land. It is sometimes called "the farmer's income tax"; but the name is misleading, for the tax applies to many classes of land other than agricultural land. The form of the Schedule (*a*) is most confusing; on the face of it, it applies to all lands, &c. which are charged with tax under Schedule A. But when Rule 1 (*a*) with its provisoes is read into the Schedule itself, it is found that (generally speaking) residential, industrial and business property, though taxed under that Schedule, are excepted from the purview of Schedule B. This Schedule does not affect any dwelling-house (with its domestic offices) that is not a farmhouse, or "any warehouse or other building occupied for a trade or profession" (*b*).

It is somewhat unsafe, therefore, to attempt to describe the scope of this Schedule otherwise than by the use of negatives; but it may be stated broadly that it applies to all agricultural land, including a farmhouse let with it under the same tenancy and a house let under the same

(*a*) *Infra,* p. 490.

(*b*) Sched. B, r. 1, provisoes (a), (b), *infra,* p. 490. The substantive part of this rule prevented Sched. B from operating on any of the lands, &c. included in No. II. or No. III. of Sched. A, and now transferred to Sched. D, *vide supra,* p. 33. Although a rentcharge under the Tithe Act of 1836 is within General Rule No. I. of Sched. A, there is no machinery for taxing it under Sched. B, for rr. 6 & 7 of No. VII. of Sched. A are not applied by r. 4 of Sched. B.

tenancy with a farm of tithes, to woodlands (*e*), to deer forests (*f*), to "amenity lands" in general, and to all those miscellaneous hereditaments (not being dwelling-houses (*g*) or premises used for a trade or profession) taxed under No. I. of Schedule A. It does not apply to a dwelling-house occupied by a person who farms only his own lands, or even by a tenant-farmer who occupies his house under a different lease or agreement from that under which he occupies his farm, although he holds both of the same landlord, for the house (to be included) must be occupied with the farm "by virtue of one and the same demise." On the other hand, Schedule B tax is leviable in respect of such properties as a municipal office, which were held not to be taxable under No. III. of Schedule A, but under the General Rule (*h*). Where Schedule B applies, tax is levied under it in addition to that levied under Schedule A.

Lands occupied by a charity otherwise than (with a certain exception) for purposes of husbandry (*i*) and public health sewers (*k*) are exempt from tax under Schedule B.

Persons chargeable.

The tax is charged upon the occupier; and Rules 1—5 of No. VII. of Schedule A are applied to the tax charged under Schedule B (*l*). What has been said (*m*) as to the effect of those rules with regard to the charge upon the occupier, to unoccupied lands, and to changes of occupation, may therefore be read as applying also to the charge under Schedule B; and the argument that there is no charge on

(*e*) Rule 7, *infra*, p. 492.

(*f*) *Middleton* v. *L.-A.* (1876), 3 R. 599, *infra*, p. 69.

(*g*) The exception for dwelling-houses carries with it an exception for the "domestic" offices only belonging to the house; but the other exception, for premises occupied for a trade or profession, will exclude, *e.g.*, such buildings as the private-school chapel in *Browne* v. *Furtado*, [1903] 1 K. B. 723.

(*h*) *Vide Harris* v. *Edinburgh Corporation*, and the cases cited therewith, *supra*, p. 39.

(*i*) Finance Act, 1921, s. 30 (1) (b), *vide infra*, p. 290.

(*k*) Sect. 34, *vide infra*, p. 303.

(*l*) Sched. B, r. 4, *infra*, p. 491; see *Back* v. *Daniels*, [1925] 1 K. B. 526, *supra*, p. 48. As to joint occupiers, see p. 12. (*m*) *Supra*, pp. 48—55.

unoccupied lands applies with greater force to Schedule B, which imposes the tax on the occupation and not on the property.

An owner occupying his own land pays tax under both Schedules A and B; but if the land is occupied by a tenant, the latter has no right to deduct Schedule B tax against his landlord (*n*). He has, however, the same right or duty to deduct tax on payments of yearly interest, annuities, and other annual payments as a payer of income tax under Schedule D (*o*).

Basis of Assessment under Schedule B.

The assessment is made on the annual value in the case of lands occupied solely or mainly for husbandry, and on one-third of the annual value where the lands are not so occupied (*p*). The annual value is to be assessed on the same principles as for Schedule A (*q*), subject to "modifications" in two exceptional cases (*r*). In the County of London, however, the valuation list in force is binding for Schedule B as it is for Schedule A (*s*); and outside it, the Finance Acts usually provide for re-assessment only once in every five or six years (*t*).

Schedule B, however, covers only profits arising in respect of the occupation of agricultural lands, and other lands within its purview; and it is a question of fact whether a particular profit made by the occupier comes to him as such,

(*n*) The right to deduct tax under Sched. A is discussed *supra*, p. 59.

(*o*) As Schedule B contains no rules with regard to deduction of tax, there appears to be nothing to oust the application of General Rules 19 and 21, *vide infra*, p. 186.

(*p*) Sched. B, as amended by sect. 23 of the Act of 1922, *infra*, p. 490; *vide infra*, p. 69. The expression "assessable value" is used in the opening paras. of Sched. B merely for drafting purposes, and means nothing more than the annual value or one-third thereof, as the case may be.

(*q*) *Vide supra*, pp. 39 *sqq*.

(*r*) Sched. B, r. 2 (a) (b), read with Rule 11 of No. IV. of Sched. A, *infra*, p. 477. Neither of these cases is of common occurrence.

(*s*) *Vide supra*, p. 47.

(*t*) Cf. *supra*, p. 46. The provisions as to assessments, and as to appeals, are applicable under Sched. B as under Sched. A, *vide infra*, pp. 362, 373.

and has any necessary relation to the lands (*u*). If a farmer keeps a stallion on his farm to serve mares for the public, and makes profits in that way, he may be taxable under Schedule D for those profits, in addition to his liability under Schedule B (*u*), even though the farm is a stud-farm and the stallion always remains on it (*v*). But where an occupier of land carries on trade elsewhere as a potato merchant, and disposes of the potatoes grown on that land by means of that trade, the profits derived by him from growing and selling those potatoes are taxable under Schedule B, and he is not liable to be assessed for those profits under Schedule D, except to the extent of a merchant's commission on their sale (*w*). Poultry-farming, whether on a large or a small scale, may be merely a method of occupying the land, so that the occupier is not separately rateable under Schedule D for the profits (*x*).

Where lands within the scope of Schedule B (1) are occupied by a dealer in cattle or a dealer in or seller of milk, and (2) are found by the Commissioners to be insufficient for the keep of the cattle brought on to them, and (3) they find that the annual value does not afford a just estimate of the profits of the business in cattle or milk as the case may be, they may charge the occupier under Schedule D upon the balance of the profits over and above the sum upon which he is taxed under Schedule B (*y*). A farmer may be a "dealer in or seller of milk" under this rule even though he

(*u*) *Malcolm* v. *Lockhart*, [1919] A. C. 463; cf. *Earl of Derby* v. *Aylmer*, [1915] 3 K. B. 374, *infra*, p. 149; *Same* v. *Bassom* (1926), 42 T. L. R. 380; *Marshall* v. *Tweedy*, [1927] S. C. 243, *infra*, p. 239.

(*v*) *McLaughlin* v. *Bailey*, [1920] I. R. 310; 7 Tax C. 508.

(*w*) *Back* v. *Daniels*, [1925] 1 K. B. 526, *supra*, p. 65; *infra*, p. 145.

(*x*) *Lean* v. *Ball*, [1926] S. C. 15; 10 Tax C. 341; *Jones* v. *Nuttall* (1926), 42 T. L. R. 384; 10 Tax C. 346.

(*y*) Sched. D, Case III. r. 4, *infra*, p. 508. Each of the three points must be established before an assessment under Sched. D can be made: *Huxham* v. *Johnson* (1926), 136 L. T. 410. A farmer who makes additional profits by summer grazing on land which he does not occupy is taxable for those profits under Case VI. of Sched. D: *McKenna* v. *Herlihy; Donald* v. *Thomson, infra*, p. 240; but this does not apply to the wintering of stock away from a Highland sheep farm, which is an ordinary and necessary incident of the farm: *I. R.* v. *Marshall and Mitchell, infra*, p. 240.

himself sells the milk direct from his farm, without keeping any shop or other establishment for its distribution, and even though he sells only milk which is produced on the lands he occupies (*z*). The profits assessable under this rule are found by deducting the annual value from the profits of the trade for the year of assessment or the year preceding, as the case may be (*a*).

Nurseries and gardens for the sale of produce are assessed, not according to annual value, but on the profits estimated as under Schedule D; this rule does not apply to hop gardens (*b*).

An occupier (as owner or otherwise) of lands for the purpose of husbandry only, who shows within one year after the end of the year of assessment that the profits from his occupation have fallen short of the annual value, may be assessed on his actual profits (*c*).

Losses by flood or tempest are allowed for as under Schedule A (*d*).

The deduction in respect of expenses allowed generally to clergymen and ministers of religion (*e*) applies to assessments made upon them under Schedule B, *e.g.*, in respect of the occupation of glebe lands.

Sporting Rights.

The annual value for purposes of Schedule B has been held (*f*) to include that of any sporting rights to which the

(*z*) *Huxham* v. *Johnson, supra; Stephenson* v. *Waller* (1927), 44 T. L. R. 155.

(*a*) Sched. D, Case III. r. 2, as amended by sect. 17 of the Act of 1922, *infra*, p. 507. Any necessary apportionments, &c. of profits to specific periods may be made: Act of 1926, s. 35 (1), *infra*, p. 585.

(*b*) Sched. B, r. 8, *infra*, p. 492. A private garden from which produce is occasionally sold does not appear to come within this rule, cf. *Bickerdike* v. *Lucy*, [1920] 1 K. B. 707. It is difficult to see what purpose is served by keeping the assessment of lands of this class under Sched. B as rule 8 expressly does. They are, of course, not liable to be taxed twice over under *both* Schedules B and D.

(*c*) Sched. B, r. 6, *infra*, p. 491, as amended by the Act of 1923, s. 30 (3), *infra*, p. 567. The General Commissioners are to be the judges; where the tax has already been paid, the rule provides for repayment. The rule was considered in *Tranent Co-operative Soc., Ltd.* v. *Brown, infra*, p. 71.

(*d*) Sched. B, r. 3, *infra*, p. 491; *vide supra*, p. 44.

(*e*) General Rules, r. 2 (1) (a), *infra*, p. 517.

(*f*) The cases happen to have arisen under Sched. B; but they are equally applicable to Sched. A, *supra*, p. 41.

occupier is entitled whether as owner or by lease or agreement; because annual value includes the value of sporting rights (*g*), at any rate when they are not severed from the occupation of the land (*h*). Thus, the tenant of a deer forest was held liable in respect of the annual value of the forest, that is, the rent paid for it, including the privilege of killing deer; he claimed that nothing beyond the value of the land as if it were a sheep-farm could be treated as profits (*i*). In that case the tax was not demanded in respect of the grouse-shooting, which was let to the same tenant; but it was afterwards held that a farming tenant who was also the tenant of shooting rights over his farm was taxable in respect of the annual value of the farm and of the shooting rights, although he held the latter under a separate lease (*k*).

If the occupier sublets the sporting rights without divesting himself of the occupation, he does not thereby become entitled to any reduction in his assessment under this schedule (*l*).

Lands used for Husbandry.

In order to be assessed under this schedule on one-third, instead of the whole, of the annual value, lands must (as has been seen) be proved (*m*) not to be occupied for the purposes of husbandry only, or mainly for those purposes. But the land will be taxed on the full annual value in spite of being used for other purposes if the Commissioners of

(*g*) Cf. the poor rate decisions in *R.* v. *Williams* (1854), 23 L. T. (O. S.) 76; *R.* v. *Battle Union* (1866), L. R. 2 Q. B. 8.

(*h*) In the poor rate case of *R.* v. *Thurlstone* (1859), 1 E. & E. 502, it was held that a farming occupier was not rateable in respect of the value of the shooting rights which were reserved. The matter is dealt with by sect. 6 of the Rating Act, 1874 (37 & 38 Vict. c. 54), but this enactment does not affect annual value for income tax purposes.

(*i*) *Middleton* v. *L.-A.* (1876), 3 R. 599; 1 Tax C. 109.

(*k*) *Revell* v. *Scott* (1895), 22 R. 772; 3 Tax C. 403. Angling rights were also included in the shooting lease, but do not appear to have been included in the assessment. Cf. *R.* v. *Williams, supra,* note (*g*), where a similar decision was given with regard to annual value for poor rate.

(*l*) *Miller* v. *Anderson,* [1922] S. C. 284; 8 Tax C. 279.

(*m*) To the satisfaction of the (General) Commissioners concerned, either before they allow the assessment, or on appeal.

Inland Revenue refer the matter to the Department of Agriculture in England, Scotland, or Ireland and the Department certifies that such use is unreasonable (*n*).

There is no definition of husbandry in the Income Tax Acts (*o*); the term is not confined to tillage or cultivation; it includes the grazing and rearing of sheep (*p*) and cattle, the production of milk, poultry-farming (*pp*), and so on. It is a question of fact in each case whether the occupation is for purposes of husbandry (*q*). A stud-farm, perhaps, could not be said to be so occupied; but the existence on a grazing farm of one stallion hired out for service would not prevent the farm as a whole from being so occupied (*r*).

Choice between Schedules B and D.

The original idea of Schedule B is believed to have been to tax the farmer on his profits estimated by a very rough rule-of-thumb in terms of rent (or annual value), because of the difficulty of ascertaining his profits more accurately. The Schedule, however, applies to many other persons besides farmers; but a person occupying lands for husbandry only may elect to be assessed under Schedule D instead of Schedule B; he must do so by notice to the surveyor of taxes within two months after the commence-

(*n*) Sched. B, *infra*, p. 490. This provision is probably aimed at cases where what should be agricultural land is turned practically into shooting preserves or rabbit warrens (even though there is some subordinate agricultural use), as well as at deer forests, *vide supra*, p. 69; note that it is not confined to cases where there is no agricultural use of the land at all.

(*o*) Nor in the following Acts where the word occurs:—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), s. 39 (excess profits duty); Workmen's Compensation Act, 1900 (63 & 64 Vict. c. 22), s. 1 (3); Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61.

(*p*) *Keir* v. *Gillespie* (1919), 57 S. L. R. 73; 7 Tax C. 473.

(*pp*) *Lean* v. *Ball*, [1926] S. C. 15; *Jones* v. *Nuttall* (1926), 42 T. L. R. 384, *supra*, p. 67.

(*q*) Thus, for the purposes of excess profits duty, a farm carried on by manufacturing chemists to supply herbs to their factory was held to be carried on for husbandry: *I. R.* v. *William Ransom & Son, Ltd.*, [1918] 2 K. B. 709; and a co-operative creamery was held not to be so carried on: *I. R.* v. *Cavan, &c. Dairy Soc. Ltd.*, [1917] 2 I. R. 622; 12 Tax C. 1.

(*r*) Cf. *Malcolm* v. *Lockhart*, *supra*, p. 67.

ment of the year of assessment (*s*). In that case his profits from the occupation of his lands will be calculated as profits of a trade under Schedule D, that is, in general according to the profits made in the preceding year (*t*); it will not be to his advantage to give such a notice unless his profits so calculated are likely to be less than the annual value of the lands (*u*), except for the sake of carrying forward losses (*uu*).

A similar option is given to any person occupying woodlands, who proves that they are managed by him on a commercial basis, and with a view to the realization of profits; but in this case the election once made by any person will apply as long as the woodlands are occupied by him, and must extend to all woodlands (managed as above described) on the same estate (*x*); any woodlands planted or replanted since 9th July, 1916, will, however, be treated for this purpose as a separate estate if notice is given within ten years after the time of planting or replanting (*y*). As to woodlands, there is no advantage in making the option

(*s*) Sched. B, r. 5, *infra*, p. 491; as to service of notice, see para. (2) of the rule. Note that occupation "mainly" for purposes of husbandry does not give the right of option. The right of option extends to an industrial and provident society, *Tranent Co-operative Soc., Ltd.* v. *Brown* (1920), 58 S. L. R. 263; 8 Tax C. 1, *infra*, p. 299.

(*t*) *Vide infra*, p. 161; as to the account year to be taken, see Act of 1926, s. 34, *infra*, p. 584.

(*u*) See "Basis of assessment," *supra*, p. 66.

(*uu*) See note (*b*), *infra*.

(*x*) This may mean lands held by the same person under the same title and lying in a ring-fence, or all lands wherever situate held by the same person under the same title, or lands held by the same person under different titles. The Act affords no guidance.

(*y*) Sched. B, r. 7, as amended by Finance Act, 1922, s. 23 (2), *infra*, pp. 492, 552. The directions as to procedure in this rule are obscure, and Rule 5 has to be read into it. A person concerned, however, who desires to exercise the option to be taxed under Schedule D, will probably be safe from errors of procedure if he (1) gives notice to the surveyor of taxes within two months of the commencement of a year of assessment (see Rule 5) that he desires to be assessed under Sched. D, and (2) within the same time makes application to either the General or the Special Commissioners to prove the facts as to management; it appears from para. (c) of Rule 7 that he must make this application every year (and is liable to have it overruled in any year) although his election, when made, binds him once for all. He cannot apply both to General and Special Commissioners in the same year.

unless the profits calculated under Schedule D (*z*) are likely to be less than one-third of the annual value (*a*).

In the case of land occupied for husbandry only, or of woodlands, a person who has already elected to be taxed under Schedule D and sustains loss, may obtain an adjustment of his liability by reference to that loss (*b*). Deductions are allowed for depreciation or obsolescence of machinery and plant (*c*).

(*z*) *Vide infra,* pp. 161 *sqq.;* and Act of 1926, s. 34, *infra,* p. 584.

(*a*) See "Basis of assessment," *supra,* p. 66.

(*b*) Sect. 34, *infra,* p. 584. The loss may now be carried forward to succeeding years, as in the case of an ordinary trade: Act of 1926, s. 33 (4), *vide infra,* p. 172; but a return to assessment under Sched. B puts an end to this advantage: sect. 33 (4), proviso, *infra,* p. 584.

(*c*) Act of 1925, s. 16, *infra,* p. 572; see proviso (ii); Sched. D, Cases I. and II., rr. 6, 7, *vide infra,* p. 148.

CHAPTER IV.

INTEREST, ETC. PAYABLE OUT OF PUBLIC REVENUES: SCHEDULE C.

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Scope of Schedule C.

INCOME tax is charged under this Schedule on all profits arising from interest, public annuities, dividends and shares of annuities payable out of the public revenue of the United Kingdom, or of any foreign State or British possession, if payable in the United Kingdom (*a*). But if the person owning any securities of a foreign State or British possession, and entitled to the interest and dividends thereon, is not resident in the United Kingdom, no tax is chargeable (*b*); the non-resident can obtain this relief, even though the securities are held under a trust, if he is the sole beneficiary in possession and can at any time call upon the trustees to make him the absolute owner (*c*).

There is no definition of "public revenue" or "public annuities," but it is the practice to levy the tax under Schedule C only upon interest, &c. payable out of the

(*a*) Sched. C, opening words: rr. 1 (a) and 2 (d), *infra*, p. 494; other profits on securities bearing interest so payable are chargeable under Sched. D, Case III. r. 1 (c), *infra*, p. 506; so also interest, &c. payable as described in the text where the half-yearly payments do not exceed 50*s*., *ibid*. r. 1 (d). As to foreign loans and as to Northern Ireland, *vide infra*, p. 77.

(*b*) Sched. C, r. 2 (d). As to the meaning of "resident," *vide infra*, p. 270; and as to the right of appeal on this point, *vide infra*, p. 381. If the securities have become vested in any custodian or administrator of enemy property, such vesting is to be disregarded for this purpose: Act of 1925, s. 20, *infra*, p. 574.

(*c*) *Ibid*., proviso; the relief may be given by allowance or by repayment, *vide infra*, p. 388.

revenues of a State (*d*), interest on municipal loans being charged under Schedule D (*e*). Again, annuities of the nature of pensions are taxed (with other pensions) under Schedule E, though paid by the Crown or out of the public revenues of the United Kingdom (*f*); annuities of the nature of pensions payable in the United Kingdom not by the Crown, but out of the revenues of a foreign State, would appear to be chargeable under Schedule C.

No tax is chargeable under this Schedule in respect of stock, dividends, or interest belonging to the Crown, or to the accredited minister of any foreign State resident in this country (*g*).

War Loan, &c.

On certain War Loan Stocks issued under Acts of 1914—17, interest is paid without deducting tax; such interest, as well as that on Exchequer Bonds issued during the Great War or within six months after it, is taxable under Schedule D and not under Schedule C (*h*). But where such bonds or stock are inscribed or registered in the books of the Bank of England or Bank of Ireland, the holder may now, on application, have the tax deducted at the source (*i*); if he holds as a trustee, he need not obtain the consent of the beneficiary. The application may be withdrawn, and in that case and in case of transfer, the interest will again be paid

(*d*) The Government of India contracted to pay certain "annuities" in connection with the purchase of railway undertakings, and the Crown sought to tax these under Sched. C; but the Courts did not decide whether (so far as they were taxable at all) the tax was leviable under Sched. C or Sched. D: *Secretary of State* v. *Scoble; East Indian Rail. Co.* v. *Secretary of State, infra,* p. 191.

(*e*) *Vide infra,* pp. 178, 195; the word "public" in Sched. C is thus treated as meaning "national"; in Sched. E it is used in a much wider sense, cf. rule 6 thereof, *infra,* p. 513.

(*f*) *Vide infra,* p. 244. Although Sched. C does not specify the public annuities that are chargeable under it, Sched. E charges the tax on annuities payable as stated in the text "other than annuities charged under Sched. C." As under either schedule the assessment is on the profits of the actual year, the question which schedule applies affects the method of collection rather than the amount payable. See, however, Act of 1923, s. 17, *infra,* p. 257, note (*k*).

(*g*) Sched. C, r. 2 (a) (b) (c).

(*h*) Act of 1918, s. 49 (2); Sched. D, Case III. r. 1 (f), *infra,* p. 507.

(*i*) Finance Act, 1921, s. 27, *infra,* p. 540; the tax will be deducted in accordance with Sched. C.

in full without deduction. Both application and withdrawal must be made in a prescribed form; in either case two months' notice is required, that is to say, any payment of interest within two months of the application or withdrawal will not be affected thereby. When the name of the holder who made application is changed in the books of the bank, it would appear that the interest becomes again payable without deduction of tax.

Interest on War Loan Stock not exceeding 200*l.* in face value and inscribed in the Post Office Stock Register is also taxed under Schedule D (*k*).

A bank carrying on a *bonâ fide* banking business in the United Kingdom is relieved from tax under Schedule C upon interest on securities which represent subscriptions to War Loans by the bank; this interest is to be brought into the general profits of the bank for assessment under Schedule D (*l*).

No tax is levied in respect of interest on securities issued before 6th April, 1919, by the Treasury as being tax free, while they are in the beneficial ownership of persons not ordinarily resident in the United Kingdom (*m*). This exemption covers securities so issued forming part of the "foreign life assurance fund" of an assurance company if the income is applied or re-invested for the purposes of that fund, or purchased out of the interest of the fund remitted to this country, even though the company carries on business in the United Kingdom (*n*).

(*k*) Act of 1918, s. 49 (1), *infra*, p. 422.

(*l*) Sched. C, r. 3, *infra*, p. 493. The Special Commissioners must be satisfied that the securities represent such subscriptions.

(*m*) Sect. 46 (1), read with sect. 239 (2). As to residence, *vide infra*, p. 270; and as to appeal on this point, *vide* p. 381. As to securities vested in a custodian, &c. of enemy property, see p. 73, note (*b*), *supra*.

(*n*) Sect. 46 (2) (3); "assurance company" means any person or body of persons to which the Assurance Companies Act, 1909, applies; "foreign life assurance fund" is also defined in sect. 237, *infra*, p. 471. The Act of 1909 (9 Edw. 7, c. 49) applies by sect. 1 to all persons or bodies corporate or unincorporate carrying on within the United Kingdom business (as there defined) of life assurance, fire, accident, or employer's liability insurance, or bond investment (except registered friendly societies and trade unions), and to a company registered under the Companies Acts transacting such business in any part of the world.

The interest on war savings certificates is also exempt, provided the certificates are not held in excess of regulations by the person who claims the exemption (*o*); this applies also to national savings certificates issued by the Treasury through the Post Office.

Tax deducted before Payment of Interest by Bank of England, &c.

Under Schedule C the tax is deducted by the authorities, agents and so on, entrusted with the payment of the interest, annuities, &c. in making the payment (*p*). One set of rules (*q*) applies to payments made to or through the Bank of England, the Bank of Ireland, or the National Debt Commissioners; they must make accounts and deliver assessments and forward them to the Special Commissioners (*r*). The latter send a certificate to the Bank of England, &c., showing (among other things) the amounts of tax due from those bodies (*s*), who are to retain the amount of the tax shown in the certificate before making any payment (*t*). The retaining of the amount is deemed a payment of the tax by the person entitled to the interest, &c.; and the bodies retaining the tax are deemed to have paid the full amount due to such a person (*u*). Speaking generally, these rules do not apply where the half-yearly payment due does not exceed 50*s*. (*x*), and no deduction of tax is made where the dividends are certified by the Charity Commissioners to be subject only to charitable trusts, and to be exempt from income tax (*y*). Interest, &c. payable out of

(*o*) Act of 1918, s. 47; Savings Banks Act, 1920 (10 & 11 Geo. 5, c. 12), s. 7; Finance Act, 1922, s. 28, *infra*, p. 553.

(*p*) Other matters relating to deduction of tax at the source are dealt with in Chap. XI.

(*q*) Set out *infra*, p. 494.

(*r*) Rules 1, 2, 3. As to income tax in Ireland, *vide supra*, p. 10.

(*s*) Rules 4, 5.

(*t*) Rule 6.

(*u*) Rule 7.

(*x*) Rule 9; such small payments are taxed under Sched. D, Case III., *infra*, p. 209.

(*y*) Rule 10; Charitable Trusts (Amendment) Act, 1855 (18 & 19 Vict. c. 124), s. 28. As to exemptions generally for charitable purposes, *vide infra*, pp. 285 *sqq*.

public revenues by a public department is taxed in a similar manner to the foregoing (*z*).

Interest on Foreign Loans, &c.

Interest, &c. payable out of the revenue of Northern Ireland or out of foreign revenues (and indeed out of Dominion revenues, where this is not payable through the Bank of England or of Ireland) is taxable under a separate set of rules (*a*). These rules apply generally as regards payments out of the revenues of Northern Ireland; as regards other payments, only when they are made to persons in the United Kingdom (*aa*). The effect (*b*) of these rules, taken with the schedule, is that interest, *e.g.*, on a foreign loan is to be charged with income tax, and the agents for payment (*c*) are to be assessed and are to pay tax on behalf of the persons entitled to the interest, &c. (*d*). The agent is bound under penalty to produce accounts to the Commissioners of Inland Revenue; upon these the Special Commissioners assess the agent, allowing, however, for any exemptions (*e*). He is liable as if the tax were due from himself (*f*), and receives for this service an allowance at a rate not less than 13*s*. 6*d*. per 1,000*l*. of the interest, &c. in question (*g*). He is not obliged to disclose the affairs of any person for whom he is acting (*h*).

(*z*) "Rules as to interest, &c., payable . . . by any public department," *infra*, p. 497. The main difference is that the Commissioners who charge the interest are officers of the department concerned, appointed under sect. 69.

(*a*) *Infra*, p. 495. See note (*r*) on p. 76. The word "dividends" is used in this set of rules to cover interest, annuities, dividends, and shares of annuities, see Rule 9.

(*aa*) Rule 1, *infra*, p. 495, as amended by Act of 1926, s. 24 (1).

(*b*) Per ROWLATT, J., in *Purdie* v. *R.*, [1914] 3 K. B. 112, at p. 116.

(*c*) Rule 7 gives a list (not intended to be exhaustive) of such agents; see also definitions of coupons in Rule 9.

(*d*) Rule 3, read with Rule 7 of the preceding set of rules, set out *infra*, p. 495.

(*e*) Rules 1, 2, *infra*, p. 495; as to exemptions, see Chaps. I. and XIII.

(*f*) Rule 4.

(*g*) Rule 5; but this does not apply to payments out of the revenues of Northern Ireland, Act of 1926, s. 24 (2); *vide infra*, p. 496.

(*h*) Rule 9. As to the practice under the corresponding rules in the Act of 1853, see Lord CAVE's remarks in *Singer* v. *Williams*, [1921] 1 A. C. at pp. 50, 51.

CHAPTER V.

TRADES AND PROFESSIONS: SCHEDULE D, CASES I. AND II.

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Trade.

UNDER Case I. of Schedule D (*b*), the tax is charged "in respect of any trade not contained in any other Schedule," and this Case now includes the quarries, mines and "concerns" formerly taxable under No. III. of Schedule A (*c*). It extends to every trade, whether carried on in the United Kingdom or elsewhere (*d*); and trade "includes every trade, manufacture, adventure or concern in the nature of trade" (*e*). It also includes a trade carried on by or on behalf of the Government of any part of His Majesty's Dominions, outside Great Britain and Northern Ireland (*f*). The fact that a trade is unlawful does not prevent its profits from being taxable under Schedule D (*g*).

The words quoted are so wide as to be practically all-embracing, but there have been cases in which their

(*a*) See also Chap. X.

(*b*) *Infra*, p. 498.

(*c*) Act of 1926, s. 28 and 3rd Sched., *infra*, pp. 579, 587; for the description of these concerns, see pp. 33, 34, *supra*.

(*d*) Rule applicable to Case I., *infra*, p. 498. (*e*) Sect. 237, *infra*, p. 472.

(*f*) Act of 1925, s. 25, *infra*, p. 575.

(*g*) Cf. *Minister of Finance* v. *Smith*, [1927] A. C. 193.

application has been highly debateable. Although there have been some decisions bearing upon the larger question, What is trade? those cases have often arisen upon one or other of two subsidiary questions; first, whether one branch of the business carried on by a commercial company or partnership is a separate trade or a part of their general trade; and secondly, whether a business carried on by a society or body of persons otherwise non-commercial, is in fact of the nature of trade.

With regard to the larger question it has been held that the words, "in the nature of trade," appearing in the definition qualify only "concern" and not "adventure"; accordingly, the whole business of an insurance company forms its "adventure" and therefore its "trade" within the meaning of the Income Tax Acts, although some part of it consists of investment operations, not as a distinct object of trading, but as subsidiary to the business of life and fire insurance (*h*). It may be said more broadly that if the adventure or concern is carried on by commercial methods, the motive for which it is carried on is immaterial; and thus a society whose object is the diffusion of religious literature but which incidentally carries on bookseller's shops is to that extent engaging in trade; on the other hand, where the same society carries on a colportage agency in which the business is not purely that of pushing the sale of the goods, but largely that of administering religious advice, it is not engaged in trade (*i*). "While . . . . the establishment and conduct of the shops and the establishment and conduct of the colportage all rest upon the same ultimate motive, yet at the same time the two operations seem to be essentially distinguished. The shops are simply bookseller's shops—the other is a combination of the sale of books with a missionary

(*h*) *Liverpool and London and Globe Insurance Co.* v. *Bennett,* [1912] 2 K. B. 41; the decision was affirmed in H. L., [1913] A. C. 610, but the judgments in C. A., especially that of FLETCHER MOULTON, L.J., at p. 55, bring out more clearly the point indicated in the text. Other aspects of the case are dealt with *infra,* p. 87.

(*i*) *Religious Tract and Book Society* v. *Forbes* (1896), 23 R. 390; 3 Tax C. 415. See the other cases cited therewith, *infra,* p. 83; and cf. *Mersey Docks* v. *Lucas, supra,* p. 39.

enterprise" (*k*). Again, the Governors of a hospital who make a profit by letting off rooms in the hospital buildings for entertainments or meetings are to that extent carrying on a trade and are assessable under Schedule D for that profit, although it is applied for hospital purposes (*l*). And a statutory authority may carry on a trade or concern, although the profits must by statute be applied (after paying charges) for public purposes (*m*).

The same principle underlies the decision that a trustee for creditors who, while winding up the rest of the business of a firm, carries on a separate portion of it for profit, is to that extent engaged in trade, although his motive in doing so is to liquidate the debts of the firm (*n*).

A company formed to acquire and deal with the assets of a bank in liquidation may be carrying on a trade (*o*); and so may a company formed to deal with lands which have been transferred to the bondholders of a defaulting State (*p*). On the other hand, a company formed for family reasons in order more conveniently to develope and realize lands held on trust or otherwise by various persons has been held not to be trading (*q*). The sale of a stock of goods may constitute a trade, though the whole of the stock has been purchased in a single transaction, and no further operations of the same kind are undertaken after that stock has been sold (*r*); and so may the transactions relating to a single vessel, which has been purchased as a cargo boat, converted into a drifter, and then sold (*s*).

(*k*) Per ROBERTSON, L.P., 3 Tax C. at pp. 418, 419.

(*l*) *Coman* v. *Governors of Rotunda Hospital, Dublin*, [1921] 1 A. C. 1.

(*m*) See "Public Undertakings," *infra*, p. 83.

(*n*) *Armitage* v. *Moore*, [1900] 2 Q. B. 363; the trustee wound up the spinning business, but continued to supply power from the mill to other firms.

(*o*) *Assets Co., Ltd.* v. *Forbes* (1897), 24 R. 578; 3 Tax C. 542; but in that case it did not appear whether any profits had in fact been made.

(*p*) *Alabama Coal, &c. Co.* v. *Mylam* (1926), 11 Tax C. 232. See also the cases cited on the distinction between additions to capital and taxable profits, *infra*, pp. 122—126.

(*q*) *Rand* v. *Alberni Land Co., Ltd.* (1920), 7 Tax C. 629.

(*r*) *Martin* v. *Lowry*, [1927] A. C. 312; *Rutledge* v. *I. R.*, [1929] S. C. 379; but see *Leeming* v. *Jones* (1929), Rating and Income Tax Newsp., July 6, *infra*, p. 238.

(*s*) *I. R.* v. *Livingston*, [1927] S. C. 251.

A company which carries on the development of a landed estate may be carrying on a trade (*t*); but if, on the other hand, it owns a block of buildings in which it "lets" offices and receives "rents" or payments for their use as well as for lifts and other services, it can only be assessed under Schedule A (*u*).

A shipping concern is itself a trade, and if a ship is owned in shares, the owners of the shares are assessable as such in respect of the trade carried on by means of the ship; they cannot treat the ownership of their respective shares as a mere part of any other trade in which they happen to be engaged (*x*), even if that other trade is the sole ownership of another ship (*y*).

A series of speculations in future delivery contracts for cotton (where no goods passed, but each transaction ended in the receipt or payment of differences), which had been continuous over many years, has been held to be a trade (*z*); so has a series of adventures in acquiring the shares in companies owning cotton-mills, winding-up the companies, and promoting new companies to acquire the assets of the old (*a*).

Mutual Concerns. Insurance and Investment Companies.

A genuine mutual concern does not (as such) carry on a trade. Therefore, an insurance company which has no shareholders, but consists entirely of members having participating policies and effects mutual insurance among the members, is not carrying on a trade in doing so (*b*), and a company (limited by guarantee) formed among employers

(*t*) See *Furtado* v. *Cardonald Feuing Co.*, [1907] S. C. 36; *Rosyth Building, &c. Co.* v. *Rogers* (1921), 8 Tax C. 11, *infra*, p. 140.

(*u*) *Salisbury House Estate, Ltd.* v. *Fry*, [1929] W. N. 185, *supra*, p. 54; *City of London Real Property Co., Ltd.* v. *Jones* (1929), June 24 (C. A.), not reported.

(*x*) *A.-G.* v. *Borrodaile* (1814), 1 Price, 148.

(*y*) *Farrell* v. *Sunderland S.S. Co.* (1903), 4 Tax C. 605.

(*z*) By ROWLATT, J., in *Cooper* v. *Stubbs* (1925), 41 T. L. R. 614; but in C. A., [1925] 2 K. B. 753, while Lord HANWORTH, M.R., agreed with that decision, the majority (WARRINGTON and ATKIN, L.JJ.) held that, on the findings, Case I. was inapplicable, and the profits were taxable under Case VI.: *vide infra*, p. 238.

(*a*) *Pickford* v. *Quirke* (1927), 138 L. T. 500.

(*b*) *New York Life, &c.* v. *Styles* (1889), 14 A. C. 381; as to the method of assessing assurance companies, *vide infra*, pp. 137—140.

to indemnify its members against liability for compensation in respect of fatal accidents, is not carrying on a trade, although it may not repay to its members the surplus receipts from premiums, but carries them to reserve (*c*). But the insurance company in the former case was assessable for profits upon annuities and non-participating policies and upon other branches of insurance business which do constitute a trade (*cc*). Even a members' golf club (unincorporated) may be carrying on a trade in respect of the green fees charged to visitors (*d*). And where an insurance company has shareholders, the profits made on participating policies are profits of a trade (*dd*). A trade association, being a company limited by shares, may be carrying on a trade in providing accommodation and trading facilities for its own members as well as for non-members (*e*).

A company whose business is to make advances on securities which include shipments of wool and other produce from Australia to England, the amounts of the advances fluctuating from time to time according as produce is realized, is carrying on a trade, and not merely an investment of money in securities, although some of its advances are made on the security of real property in Australia (*f*).

A company whose sole business is to borrow money in the United Kingdom and invest it in foreign countries and British colonies, although it carries on a trade, is taxable under Case IV. at the option of the Crown (*g*).

(*c*) *Jones* v. *S.-W. Lancs. Coal Owners' Assn., Ltd.*, [1927] A. C. 827.

(*cc*) See note (*b*), *supra*.

(*d*) *Carlisle and Silloth Golf Club* v. *Smith*, [1913] 3 K. B. 75; approved in *Coman* v. *Rotunda Hospital, infra*, p. 83, note (*m*). See *Carnoustie Golf Course Committee* v. *I. R.*, [1929] S. L. T. 366.

(*dd*) *Last* v. *London Assurance, &c.* (1885), 10 A. C. 438, *infra*, p. 139; *Equitable Life, &c.* v. *Bishop*, [1900] 1 Q. B. 177.

(*e*) *Liverpool Corn Trade Assn., Ltd.* v. *Monks*, [1926] 2 K. B. 110.

(*f*) *Smiles* v. *Australasian Mortgage and Agency Co.* (1888), 25 S. L. R. 615; 2 Tax C. 367, *infra*, p. 88.

(*g*) *Scottish Mortgage Co. of New Mexico* v. *McKelvie*, and *Smiles* v. *Northern Investment Co. of New Zealand, infra*, p. 111. As to the Crown option, *vide infra*, p. 111.

Charitable Institutions.

Certain decisions as to charities illustrate the proposition that there may be a trade, for whatever motive it is carried on, provided that the methods employed are commercial (*h*). The business of selling a hymn-book is a trade, although the profits are distributed among widows and orphans of ministers and missionaries (*i*); so is that of a bookseller's shop, though the profits are devoted to the spread of religious knowledge in other ways (*k*); and that of a restaurant, whose proceeds go to the support of an institution for religious and social improvement (*l*). Similarly, a hospital which lets rooms for entertainments and meetings is carrying on a trade (*m*); and a society for the advancement of agriculture which makes profits by an annual show (*n*). Again, the carrying on of a lunatic asylum or hospital for profit is a trade (*o*); and so is the carrying on of a school (*p*). But there is now an exemption in respect of the profits of a trade carried on by, and in the course of effecting a primary purpose of, a charity, if the profits are solely applied to the purposes of the charity (*q*).

Public Undertakings.

The profits of a municipal or other public undertaking may be the subject of charge under Schedule D, by reason

(*h*) *Supra*, p. 79.

(*i*) *Trustees of Psalms and Hymns* v. *Whitwell* (1890), 3 Tax C. 7.

(*k*) *Religious Tract and Book Society* v. *Forbes, supra*, p. 79.

(*l*) *Grove* v. *Young Men's Christian Association* (1903), 4 Tax C. 613.

(*m*) *Coman* v. *Rotunda Hospital (Governors)*, [1921] 1 A. C. 1, where the last three cases were cited with approval in the House of Lords.

(*n*) *Royal Agricultural Society* v. *Wilson* (1924), 40 T. L. R. 763; this decision was followed by a provision for a specific exemption: Act of 1924, s. 23, *infra*, p. 299.

(*o*) *St. Andrew's Hospital* v. *Shearsmith* (1887), 19 Q. B. D. 624; *Needham* v. *Bowers* (1888), 21 Q. B. D. 436; as to exemptions for hospitals, *vide infra*, pp. 285 *sqq*.

(*p*) *Brighton College* v. *Marriott*, [1926] A. C. 192.

(*q*) Act of 1921, s. 30 (1) (c), as amended by Act of 1927, s. 24, *vide infra*, p. 292; there is also an exemption for trades mainly carried on by beneficiaries of the charity.

of the transfer to that schedule of the concerns grouped under No. III. of Schedule A (*r*), which include—

> ". . . . gasworks, ... waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of the like nature having profits from or arising out of any lands, tenements, hereditaments or heritages" (*s*).

"If the fund is in its nature subject to taxation, it remains so subject, notwithstanding its proceeds are to be applied to public purposes, and the proceeds which are to be so applied are what remains after discharging the burden [*i.e.*, the income tax] to which it is subject" (*t*). Accordingly, profits derived by a municipal corporation from market dues (*u*) or coal dues (*x*) are so taxable; but a local authority is not taxable for a poor rate or other local rate, because such rates are not property, neither are their proceeds profits. Thus a local authority is not taxable upon the proceeds of a compulsory water rate leviable in respect of all houses within its district (*y*); but it is liable in respect of the proceeds of non-compulsory rates levied upon those who take the water outside its district (*z*), and in respect of receipts for the supply of water by agreement for non-domestic purposes (*a*), for in both these cases the water is supplied by agreement and the proceeds or receipts (after deduction of expenses) are in fact profits upon the sale of water. Upon the same principle, a municipal corporation is taxable upon the profits derived from supplying gas to private consumers (*b*), and

(*r*) Act of 1926, s. 38, *supra*, p. 33; the following cases were decided under Sched. A before the transfer. (*s*) No. III. r. 3, *infra*, p. 475.

(*t*) *A.-G.* v. *Black* (1871), L. R. 6 Ex. 78, 308, per BLACKBURN, J., at p. 310.

(*u*) *A.-G.* v. *Scott* (1873), 28 L. T. 302.

(*x*) *A.-G.* v. *Black*, *ubi sup.*

(*y*) *Glasgow Water Commissioners* v. *Inland Revenue* (1875), 2 R. 708; 1 Tax C. 28; see *Mersey Docks* v. *Lucas*, 8 A. C. per Lord BLACKBURN at pp. 911, 912. The effect of each of the above cases is discussed by ROWLATT, J., in *Severn Fishery Board* v. *O'May*, [1919] 2 K. B. 484.

(*z*) *Miller* v. *Glasgow Water Commissioners* (1886), 13 R. 489; 2 Tax C. 131; *Dublin Corporation* v. *M'Adam* (1887), 20 L. R. Ir. Ex. 497; 2 Tax C. 387.

(*a*) *Miller* v. *Glasgow Water Commissioners*, *ubi sup.*

(*b*) *Inland Revenue* v. *Glasgow Gas Commrs.* (1876), 8 R. 857; 1 Tax C. 122.

may not deduct against these profits the cost incurred in lighting its streets (*c*). In short, a local authority owning any profit-earning undertaking, such as a waterworks, is chargeable only upon its actual trading profits; but it is not taxable in respect of any part of that undertaking by which it earns no profit, although it cannot set off the expenses of that part against trading profits. The fact that it carries on that part in the discharge of a statutory duty, such as a duty to supply water for domestic purposes without payment other than a compulsory rate, does not make it taxable for that part. But a local authority owning any undertaking which is not carried on for profit at all, such as a slaughter-house or sewage purification works, is taxable under Schedule A in respect of its annual value (*d*).

A harbour authority which makes profits is taxable for them under Schedule D, although they must by statute be devoted to the improvement of the port, and similar public purposes (*e*), or to the repayment of loans (*f*). "There is nothing in the nature of things, nothing in the words of the Act to say that when an income has been actually earned, when an actual profit upon which the tax is put has been earned and received by any person or corporation, Her Majesty's right to be paid the tax out of it in the least degree depends upon what they are to do with it afterwards, except in certain excepted cases such as charitable trusts and some others" (*g*). That is the broad ground of the decision in *Mersey Docks* v. *Lucas;* but it was rested also upon what is now Rule 5 of No. III. (*h*). A further point was also decided, namely, that a direction in a local Act that the pro-

(*c*) *Dillon* v. *Corporation of Haverfordwest,* [1891] 1 Q. B. 575.

(*d*) See Chap. II., "Property not carried on for profit," *supra,* p. 38.

(*e*) *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 A. C. 891.

(*f*) *Sowrey* v. *King's Lynn Harbour, &c. Commrs.* (1887), 2 Tax C. 201.

(*g*) *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 A. C. 891, per Lord BLACKBURN at p. 910; the distinction between expenses incurred in earning profits, and expenditure of profits after they are earned, is again emphasized in *Port of London Authority* v. *Orsett Union,* [1920] A. C. 273. On the same principle a burial board is taxable though its profits go in relief of the poor rates: *Paddington Burial Board* v. *Inland Revenue* (1884), 13 Q. B. D. 9, *infra,* p. 86. See also *Carnoustie Golf Course Committee* v. *I. R.,* [1929] S. L. T. 366.

(*h*) *Infra,* p. 154.

ceeds are to be devoted to certain purposes does not make it unlawful to pay income tax out of the proceeds (*i*).

In order to be liable to income tax, an "inland navigation" must be one which owns the property over which the navigation takes place, and makes a profit by carrying on that property (*k*); the fact that the navigation is that of a tidal estuary does not prevent it from being an "inland navigation." Accordingly, the Humber Conservancy Board, who owned that property, were held to be liable not merely in respect of "tolls" (*l*), but also because they were an "inland navigation" in respect of statutory contributions towards the maintenance of the navigation from railway companies and another navigation authority, which were not of the nature of tolls. But where a navigation authority does not own that property, it is not an "inland navigation," nor are the dues that it levies "tolls," within the meaning of No. III. of Schedule A, and it is not taxable (*m*). Nor is a fishing board taxable, which merely protects the fisheries without owning them and raises its expenses by taking fees for fishing licences; such an authority has no tolls and carries on no trade (*n*). A burial board, which has a public duty to provide a burial ground, or which devotes its profits to public purposes (*e.g.*, in relief of rates), is liable to tax in respect of those profits (*o*), equally with a cemetery company which distributes its profits among its shareholders (*p*).

(*i*) *Mersey Docks* v. *Lucas*, per Lord SELBORNE at pp. 901, 902; see also *Corporation of Dublin* v. *M'Adam*, 20 L. R. Ir. Ex., per PALLES, C.B., at p. 515; *Dillon* v. *Corporation of Haverfordwest*, [1891] 1 Q. B., per POLLOCK, B., at p. 581.

(*k*) *Humber Conservancy Board* v. *Bater*, [1914] 3 K. B. 449.

(*l*) These are specifically mentioned in Sched. A, No. III. r. 3, *supra*, p. 84.

(*m*) *I. R.* v. *Forth Conservancy Board*, [1929] A. C. 213; assuredly the transfer to Sched. D does not make them taxable, nor are they taxable under any other provision; see next case.

(*n*) *Severn Fishery Board* v. *O'May*, [1919] 2 K. B. 484; it was sought to tax the Board under Case VI. of Sched. D; see Chap. IX.

(*o*) *Paddington Burial Board* v. *Inland Revenue* (1884), 13 Q. B. D. 9; *Portobello Town Council* v. *Sulley* (1890), 37 S. L. R. 863; 2 Tax C. 647.

(*p*) *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1889), 17 R. 154; 2 Tax C. 516; as to the calculation of those profits, *vide infra*, p. 160.

In reference to certain concerns of the classes above considered, it has been held that express exemptions in local Acts from payment of taxes apply to the income tax (*q*).

What is a Separate Trade?

The question often arises whether a part of the operations of a company, &c. forms a separate trade. Where an assurance company (*r*) carries on life assurance business (which includes the business of granting annuities) (*s*) that is to be treated as a separate business from any other class of business carried on by the company (*t*). Subject to life assurance business being thus kept separate, where an insurance company invests the money not immediately required for the purpose of meeting claims or of complying with the laws of countries in which it carries on business, or invests its accumulated profits and derives interest from its investments, these operations do not form a separate trade (*u*); and the company is therefore taxable on the profits derived from them (*x*). A mutual insurance business carried on by the members for their own benefit forms a separate trade from the non-mutual business done by the same company (*y*); and a members' golf club may carry on a separate trade in connection with visitors' green fees (*z*). On the other hand, it has been decided that a company which made loans partly on the security of produce shipped to

(*q*) An inland navigation, in *Stewart* v. *Thames Conservators*, [1908] 1 K. B. 893; a ferry, in *Pole-Carew* v. *Craddock*, [1920] 3 K. B. 109; *infra*, p. 304. Cf. *Argyll (Duke)* v. *I. R.* (1913), 7 Tax C. 225.

(*r*) For definition, *vide supra*, p. 75, note (*n*).

(*s*) Sect. 237, *infra*, p. 471.

(*t*) Sched. D, Cases I. and II. r. 15 (1), *infra*, pp. 137—139. This rule makes inapplicable the previous decisions to the contrary in *Last* v. *London Assurance, &c.* (1884), 12 Q. B. D. 389, *infra*, p. 139 (this case went up to the House of Lords upon other points); *Scottish Union, &c.* v. *Smiles* (1899), 16 R. 461; 2 Tax C. 551; and *Liverpool and London and Globe, &c.* v. *Bennett*, [1912] 2 K. B. 41; [1913] A. C. 610. It was originally enacted in the Finance Act, 1915 (5 & 6 Geo. 5, c. 62), s. 11, but only repeals the decisions last cited to the extent stated in the text.

(*u*) *Liverpool and London and Globe, &c.* v. *Bennett, supra.*

(*x*) As regards life assurance funds, this is confined to the part received in this country: see pp. 219, 220, notes (*l*), (*o*).

(*y*) *New York Life, &c.* v. *Styles, supra*, p. 81.

(*z*) *Carlisle and Silloth Golf Club* v. *Smith, supra*, p. 82.

the country, and partly on that of real property in British colonies, could not claim to distinguish these two branches of its business so as to be taxed under Case IV. instead of Case I. on the profits of the second branch; but it is submitted that this might legitimately be done in any case in which the accounts of the two branches were not inextricable (*a*). The cases decided in connection with charitable able institutions show that these may be engaged in trades distinct from their main business, which is non-commercial (*b*). In the same way, a private person may carry on a breeding-stud as a hobby, and not on commercial principles; but if he also lets out stallions for profit, that operation may of itself constitute a trade (*c*).

An individual may carry on the trade of publishing a magazine, and the separate profession of editing the magazine and writing articles for it (*d*).

A company owning a whole ship is carrying on a trade separate from that of another ship in which it owns only a share (*e*). Where a company owns ships trading between this country and another, the arrangement of cargoes and freights for the return voyage by a separate board of directors in the other country does not constitute a separate trade (*f*). Underwriting and shipowning may be separate trades though carried on by the same company (*g*). The manufacture of shells during the war was found not to be a separate trade from that of the boiler works in which it

(*a*) *Smiles* v. *Australasian Mortgage and Agency Co.* (1888), 25 S. L. R. 645; 2 Tax C. 367, *supra*, p. 82.

(*b*) *Vide supra*, pp. 79, 83. In any case to which the exemptions granted by Act of 1924, s. 23, or Act of 1927, s. 24, do not apply, the expenses of the non-taxable main business cannot be set off against the profits of the taxable trade.

(*c*) *Derby* (*Earl*) v. *Bassom* (1926), 42 T. L. R. 380; cf. the cases cited *supra*, p. 67, note (*u*).

(*d*) *I. R.* v. *Maxse*, [1919] 1 K. B. 647 (excess profits duty).

(*e*) *Farrell* v. *Sunderland S.S. Co.*, *supra*, p. 81. Cf. *Birt, Potter and Hughes, Ltd.* v. *I. R.* (1927), 12 Tax C. 976 (excess profits duty); and contrast *I. R.* v. *Turnbull, Scott & Co.* (1924), *ibid.* 749; 132 L. T. 296.

(*f*) *New Zealand Shipping Co.* v. *Thew* (1922), 8 Tax C. 208; see note (*c*), p. 90. Contrast *Tarn* v. *Scanlan, Muller* v. *Lethem, infra*, p. 111.

(*g*) *Scales* v. *G. Thompson, Ltd.* (1928), 138 L. T. 331; *Devon Mutual Assn.* v. *Ogg* (1927), 13 Tax C. 184; see note (*e*), *supra*.

was carried on (*h*). The manufacture and sale of railway wagons, and the hiring-out of such wagons, may form a single trade (*i*).

Trade carried on in the United Kingdom or elsewhere.

It has already been stated (*k*) that the tax is leviable under Schedule D on the profits of a trade carried on in the United Kingdom or elsewhere. This statement requires expansion. A person residing in the United Kingdom is taxable under Case I. of Schedule D on the whole profits of a trade which he carries on in the United Kingdom (*l*), even if the trade is only in part carried on in this country (*m*). If, however, the trade of a person so resident is carried on entirely outside the United Kingdom, he is not taxable under Case I., but is taxable only in respect of that portion of the profits which he receives in the United Kingdom, and his assessment is made under Case V. (*n*). A person not resident in the United Kingdom is taxable under Case I. on the whole profits of any business exercised by him in the United Kingdom (*o*). It is immaterial whether the person carrying on the trade is a British subject or not (*p*).

Difficult questions arise, first, as to what constitutes residence in the United Kingdom, both in the case of an individual, and in the case of a company; secondly, as to how far a trade which at first sight appears to be carried on, at least in part, outside the United Kingdom, is carried

(*h*) *Howden Boiler and Armaments Co., Ltd.* v. *Stewart,* [1925] S. C. 110.

(*i*) *Gloucester Carriage and Wagon Co., Ltd.* v. *I. R.,* [1925] A. C. 469 (corporation profits tax); cf. *T. Beynon, Ltd.* v. *Ogg, infra,* p. 123. See also cases on "Succession," *infra,* pp. 168—170.

(*k*) *Supra,* p. 78.

(*l*) Sched. D, 1 (a) (ii): Rule applicable to Case I., *infra,* p. 498.

(*m*) Like that of a travelling representative of English manufacturers, who resides here but sells goods for them in the East: *Spiers* v. *Mackinnon* (1929), 8 A. T. C. 197.

(*n*) Where the word "possessions" includes "trade"; *Colquhoun* v. *Brooks* (1889), 14 A. C. 493, *infra,* p. 92. A provision for relief of the business of shipping from double taxation (contingent on a reciprocal arrangement with the foreign country concerned) appears in Finance Act, 1923, s. 18, *infra,* p. 562; and is extended to British Dominions, &c. by Act of 1924, s. 31, *infra,* p. 570.

(*o*) Sched. D, 1 (a) (iii): Rule applicable to Case I., *infra,* p. 498.

(*p*) Sched. D, 1 (a) (ii), (iii).

on by a person resident in the United Kingdom; and thirdly, as to whether a person resident outside the United Kingdom is carrying on a trade within it. So far as the first question applies to an individual, it is discussed in Chapter XI.; in this chapter it is, however, proposed to discuss the first of these questions as far as it applies to companies; the second question, which is bound up with this aspect of the first; and the third, which involves matters that may compendiously be described as "agency" (*y*).

"*Residence*" *of Companies and Partnerships: Registration.*

The question whether individuals reside in the United Kingdom or not can be determined without reference to the business which they own or carry on, and is dealt with in Chapter XII. But a limited company can only be "resident" in an artificial sense of the word. The country of incorporation is not conclusive of the place of its residence; and a company registered in the United Kingdom is not resident there for income tax purposes if "the central management and control" of its business, or, in other words, "the head and seat and directing power," are wholly situate outside this country. The country of incorporation is looked upon as being only one among many factors, which may indicate where the head and seat and directing power are situate (*z*). Thus companies registered in the South African Republic (*a*), in Cape Colony (*b*), in New Zealand (*c*), and in the United States (*d*), have been held to be resident in the

(*y*) So far as "agency" bears on the machinery of collection as apart from the imposition of liability, it is considered in Chap. XII., *infra*, p. 275.

(*z*) *Egyptian Delta Land, &c. Co., Ltd.* v. *Todd*, [1929] A. C. 1, where the House of Lords approved (among other cases) *A.-G.* v. *Alexander* (1874), L. R. 10 Ex. 20; *Cesena Sulphur Co.* v. *Nicholson; Calcutta Jute Mills* v. *Nicholson* (1876), 1 Ex. D. 428; *Imperial Continental Gas Association* v. *Nicholson* (1877), 1 Tax C. 138; *London Bank of Mexico* v. *Apthorpe*, [1891] 2 Q. B. 378, *infra*, pp. 93, 95, 96.

(*a*) *Goerz & Co.* v. *Bell*, [1904] 2 K. B. 136, *infra*, p. 96.

(*b*) *De Beers Consolidated Gold Mines, Ltd.* v. *Howe*, [1905] 2 K. B. 612; [1906] A. C. 455, *infra*, p. 96.

(*c*) *New Zealand Shipping Co.* v. *Stephens* (1907), 5 Tax C. 553; *The same* v. *Thew* (1922), 8 Tax C. 208, *supra*, p. 88.

(*d*) *American Thread Co.* v. *Joyce* (1912), 6 Tax C. 1, 163.

United Kingdom, because the head and seat and directing power were in London. And the operations of subsidiary companies incorporated abroad have been held in certain cases to form part of the trade of principal companies resident in this country (*e*).

A company may, however, have more than one "residence," and if it is incorporated and has its registered office in the United Kingdom, and transacts there a sufficient amount of business so that it can be said that its central management and control are divided between the United Kingdom and a foreign country, the company may be resident in the United Kingdom (*f*), although the "real control and management of the company" are found as a fact to be in Sweden (*g*).

The cases bearing on the situation of control and management of companies are considered in more detail below (*h*).

A partnership, the control and management of whose business is situate abroad, is deemed to be resident outside the United Kingdom and assessable to the same extent and no more as a person resident abroad (and not having a residence in this country), although some of the partners may be personally resident in this country (*i*).

Trade carried on entirely outside the United Kingdom.

The profits of a trade carried on entirely outside the United Kingdom are not taxable under Case I., even if

(*e*) *Vide infra*, p. 100.

(*f*) *Swedish Central Rail. Co.* v. *Thompson*, [1925] A. C. 495; the only income of the company arose from a rent in Sweden, and it was held to be assessable on the whole of that income under Sched. D, Case V. r. 1, *vide infra*, p. 228. Under that rule residence in this country is sufficient to establish liability; and except so far as it might affect the question of residence, it was immaterial in what country the company's business was carried on. It was not on this ground, however, that in the *Egyptian Delta Case, supra*, note (*z*), *Swedish Central Rail. Co.* was distinguished. The statement in the text of the effect of these two decisions is based on Lord SUMNER's opinion, [1929] A. C. pp. 16 *sqq.*, in which the whole history of this matter will be found.

(*g*) Set out in 9 Tax C. at p. 346.

(*h*) See "Head and Seat and Directing Power," *infra*, pp. 94 *sqq.*

(*i*) Sched. D, Cases I. and II. r. 12, *infra*, p. 505; *Sulley* v. *A.-G.*, *infra*, p. 105. In respect of the profits of any trade carried on in this country, the firm may be assessed in the name of any partner resident in this country, *vide infra*, p. 267.

the trade belongs in part to a person residing in the United Kingdom (*k*). At first sight the opening words of Schedule D (*l*) seem wide enough to make the whole profits of such a trade taxable; but "the whole Schedule must be read together. . . . Unquestionably the rules applicable to a particular 'Case' may cut down, and cut down very materially, the charging words in the earlier part of Schedule D" (*m*). The machinery of assessment provided by the Act is not applicable to those profits, except as to that portion which is received in this country (*n*).

Trade carried on partly within and partly outside the United Kingdom.

Colquhoun v. *Brooks* (*o*) was the case of a partner in a business carried on in Australia who resided in England and did not in fact exercise any control over the business, though his partnership agreement entitled him to do so if he desired. The contrast between this case and that of *Ogilvie* v. *Kitton* (*p*) shows clearly the line that has to be drawn for purposes of income tax between trades carried on exclusively outside the United Kingdom, and those carried on partly or wholly within the United Kingdom. Both cases deal with individuals and not with companies. In the latter case the appellant, who resided in Scotland, was the owner of a business locally situate in Canada; he had the sole right of control; the managers and other employees were his servants and could not act without his authority, and statements of all their transactions were

(*k*) *Colquhoun* v. *Brooks* (1889), 14 A. C. 493.

(*l*) Sched. D, 1 (a) (ii), and rule applicable to Case I., *infra*, pp. 497, 498.

(*m*) Per Lord MACNAGHTEN, 14 A. C. at pp. 514—5.

(*n*) That portion is taxable under Case V. r. 2, *infra*, p. 509; the machinery provisions on which the conclusion stated in the text is founded by Lord HERSCHELL, 14 A. C. at pp. 506—508, are sects. 106 and 108 of the Act of 1842, the relevant portions of which are now replaced by Sched. D, Misc. Rules, r. 4. His Lordship refers also to Rule 3 (now Rule 10) of Sched. D, Cases I. and II., *infra*, p. 503, and to sect. 39 of the Act of 1842, now replaced by Sched. D, Misc. Rules, r. 2, *infra*, p. 510, and Rule 3 of the General Rules, *infra*, p. 517. See also per Lord MACNAGHTEN at pp. 515, 516.

(*o*) *Supra*.

(*p*) [1908] S. C. 1003; 5 Tax C. 338.

sent him weekly. Although, in fact, he had not found it necessary to intervene, he was held to be carrying on a business in the United Kingdom and to be taxable under Case I. on the whole of the profits whether received in this country or not.

Midway between the two cases last described lies that of a bank whose head office is in this country, but which carries on operations in foreign countries through branches established there. Such a bank is carrying on a single business, and it is taxable in the United Kingdom upon the whole of its profits (*q*); on the other hand, if the bank does not "reside" in this country, but carries on a branch of its business here, it is taxable only on the profits of the branch (*r*). Further, where the corporeal subject of the trading (such as a railway) is situate in a foreign country, the company which carries on the railway, although it has no other business, is taxable on the whole of the profits if the head and seat and directing power, or, in other words, if the "conduct and management, the head and brain of the trading adventure," are situate in this country (*s*); but if the corporeal subject (in this case a hotel) is situate abroad, and the conduct and management are also outside this country, the company is not taxable under Case I. but under Case V. (*t*). The principle was stated thus in *Mitchell* v. *Egyptian Hotels, Ltd.* (*u*):—

"Where a resident in the United Kingdom is proprietor of a profit-earning business wholly situate and carried on abroad, he is chargeable to income tax under Case V. of Schedule D if he takes no part in earning those profits, and if he takes any part, is chargeable under Case I. This is true whether the proprietor is a natural or an incorporated person; whether he takes part in earning the profits in his own person or only by agent or servants. The question is

(*q*) *London Bank of Mexico* v. *Apthorpe*, [1891] 2 Q. B. 378, *infra*, p. 131.

(*r*) *A.-G.* v. *Alexander* (1874), L. R. 10 Ex. 20.

(*s*) *San Paulo (Brazilian) Rail. Co.* v. *Carter*, [1896] A. C. 31, *infra*, p. 95.

(*t*) *Mitchell* v. *Egyptian Hotels, Ltd.*, [1915] A. C. 1022, *infra*, p. 98; contrast *New Zealand Shipping Co.* v. *Thew* (1922), 8 Tax C. 208, *supra*, p. 90.

(*u*) Per Lord SUMNER, [1915] A. C. at pp. 1039—40.

whether the profits are wholly or partly earned from a business wholly or partly carried on in the United Kingdom. If he takes a part at home in earning the profits, its importance relatively to that taken by his agents abroad does not matter, nor does the liability to be charged under Case I. depend on active interference. Control exercised here over business operations abroad, though they are far greater in volume or magnitude, will suffice for Case I.: *San Paulo (Brazilian) Rail. Co.* v. *Carter* (*v*). So, too, will mere oversight regularly exercised, even though actual intervention never becomes necessary, everything abroad going smoothly without it: *Ogilvie* v. *Kitton* (*w*). Some actual participation in carrying on the trade is necessary, though it may not go beyond passive oversight and tacit control. It is not enough that the proprietor merely has the legal right to intervene: otherwise *Colquhoun* v. *Brooks* (*x*) would have been otherwise decided; for there the respondent was entitled to intervene at any time, though in fact he never did so, but took his share of the profits just as they happened to be earned by those in control abroad."

Head and Seat and Directing Power.

Although the head and seat and directing power of a company may, as was decided in *Swedish Central Rail. Co.* v. *Thompson* (*y*), be divided and situate in more than one country, it has, since the decision in *Todd* v. *Egyptian Delta Land Co.* (*z*), once more become clear that the question whether they are (wholly or partly) situate in the United Kingdom must be answered in order to see whether the company is resident there (*a*) and carries on a trade there, so as to be taxable on the whole profits.

(*v*) [1896] A. C. 31, *supra*, p. 93.
(*w*) [1908] S. C. 1003; 5 Tax C. 338, *supra*, p. 92.
(*x*) 14 App. Cas. 493, *supra*, p. 92. (*y*) [1925] A. C. 495, *supra*, p. 91.
(*z*) [1929] A. C. 1, *supra*, p. 90.
(*a*) The question of "residence" also has an important bearing on assessment in regard to foreign possessions under Cases IV. and V. of Sched. D: see Chap. VIII. The *Swedish Central* case, *supra*, arose under Case V. r. 1, in respect of a rent, not of a trade: see p. 91, note (*f*).

The question is one of fact; and if the Commissioners have recorded a finding upon this question, the Courts will not interfere unless they are satisfied there was no evidence before the Commissioners upon which that finding could be reached (*b*).

The head and seat and directing power of a company and the control and management of its business may be situate in this country, even though the business is concerned solely with an undertaking whose physical situation is in a British possession or a foreign country. Thus, companies have been held to be resident and carrying on trade in the United Kingdom, where the trade was that of a sulphur mine in Italy (*c*), of a jute mill in India (*d*), of gasworks in continental countries (*e*), of a hotel in Colorado (*f*), of a railway in Brazil (*g*), of oil wells in Galicia (*h*), of breweries in the United States (*i*), of cotton mills in the United States (*j*). On the other hand, in the case of two hotels in Egypt, the head and seat and directing power were held to be situate in that country and not in the United Kingdom (*k*). The question depends on the facts of the management and not on the physical situation of the thing that is managed.

If the meetings of the directors who manage the business are held in the United Kingdom, the "head and seat and directing power" are situate there. The residence of one or more directors in the country where the physical subjects of the trade are situate is not enough to transfer the head and seat and directing power to that country if their

(*b*) *Gramophone and Typewriter, Ltd.* v. *Stanley,* [1908] 2 K. B. 89, *infra,* p. 101; *New Zealand Shipping Co., Ltd.* v. *Stephens* (1907), 5 Tax C. 553, *infra,* p. 96; *American Thread Co.* v. *Joyce* (1912), 6 Tax C. 1, 163, *infra,* p. 97; *New Zealand Shipping Co., Ltd.* v. *Thew* (1922), 8 Tax C. 208, *infra,* p. 96.

(*c*) *Cesena Sulphur Co., Ltd.* v. *Nicholson* (1876), 1 Ex. D. 428.

(*d*) *Calcutta Jute Mills, Ltd.* v. *Nicholson* (1878), 1 Ex. D. 428.

(*e*) *Imperial Continental Gas Assocn.* v. *Nicholson* (1887), 1 Tax C. 138.

(*f*) *Denver Hotel Co., Ltd.* v. *Andrews* (1895), 3 Tax C. 356.

(*g*) *San Paulo (Brazilian) Rail. Co.* v. *Carter,* [1896] A. C. 31.

(*h*) *Grove* v. *Elliots and Parkinson* (1896), 3 Tax C. 481.

(*i*) *Frank Jones Brewing Co., Ltd.* v. *Apthorpe* (1898), 4 Tax C. 6; *U. S. Brewing Co., Ltd.* v. *Apthorpe, ibid.* 17; *St. Louis Breweries, Ltd.* v. *Apthorpe, ibid.* 111; *Apthorpe* v. *Peter Schoenhofen Brewing Co., Ltd.* (1899), *ibid.* 41.

(*j*) *American Thread Co.* v. *Joyce* (1913), 6 Tax C. 1, 163.

(*k*) *Mitchell* v. *Egyptian Hotels, Ltd.,* [1915] A. C. 1022.

powers are delegated to them by, and their actions are subject to the control of, the board in this country (*l*), even though no such control is in fact exercised, so long as the board retains the right of revoking the delegated powers (*ll*). Still less does it affect the matter if the representative abroad is a servant of the company and not a director (*m*). On the other hand, if the actions of the directors residing abroad are not subject to the control of the directors in this country, the head and seat and directing power may be situate outside the United Kingdom; and if the operations of the trade are situate wholly abroad, there is no trade exercised in this country (*n*). But if any part of the operations of a company registered, and therefore resident, in the United Kingdom, is situate in this country, though controlled solely by a director or directors resident abroad, the company exercises a trade in the United Kingdom (*o*). Where the directors in this country control only that part of the trade which is carried on in the United Kingdom, the company is taxable only in respect of the profits of that part (*oo*). Cases in which there is a separate or subsidiary company abroad will be discussed below (*p*).

This matter is so important as to require that some of these cases should be considered in more detail. In *De Beers Consolidated Gold Mines* v. *Howe* (*q*), the trade was not only the owning and working of diamond mines in Cape Colony, but the sale of the diamonds got

(*l*) *Cesena Sulphur Co.* v. *Nicholson, Calcutta Jute Mills* v. *Nicholson, Frank Jones Brewing Co., Ltd.* v. *Apthorpe, supra,* p. 95; *Goerz & Co.* v. *Bell,* [1904] 2 K. B. 136; *De Beers Consold. Gold Mines, Ltd.* v. *Howe,* [1905] 2 K. B. 612; [1906] A. C. 455; *New Zealand Shipping Co., Ltd.* v. *Stephens* (1907), 5 Tax C. 553; *The same* v. *Thew* (1922), 8 Tax C. 208.

(*ll*) *Noble, Ltd.* v. *Mitchell* (1926), 43 T. L. R. 102.

(*m*) *San Paulo (Brazilian) Rail. Co.* v. *Carter, supra; Grove* v. *Elliotts and Parkinson, supra,* note (*h*); cf. *Ogilvie* v. *Kitton, supra,* note (*p*), p. 92.

(*n*) *Mitchell* v. *Egyptian Hotels, Ltd., supra.*

(*o*) *John Hood, Ltd.* v. *Magee,* [1918] 2 I. R. 34; 7 Tax C. 327; *Aramayo Francke Mines, Ltd.* v. *Eccott,* [1925] A. C. 634. See also *Swedish Central Rail. Co.* v. *Thompson,* [1925] A. C. 495, *supra,* pp. 91, 94.

(*oo*) *A.-G.* v. *Alexander* (1874), L. R. 10 Ex. 20, *supra,* p. 93.

(*p*) *Infra,* p. 100.

(*q*) The facts appear in [1905] 2 K. B. 612; as to the effect of registration, see p. 90, *supra.*

in those mines to a syndicate in London. The company was registered, its head-office (so called) was situate, and its general meetings were held, in Cape Colony; but by the articles of association four at least of the directors were bound to reside in England, and a clear majority of them were in fact so resident. Weekly meetings of directors were held in London as well as at Kimberley, the financial operations and the selling of the diamonds were carried on in London, and a large portion of the profits was due to the judicious mode in which the sale was regulated. "It is in London that the governing work of the company is done, and where the principal officers of the company meet in greatest numbers and consult and determine its business" (*r*). The company were held to be taxable under Case I. on the whole of their profits.

Cotton-mills in the United States were the subject of the trade in *American Thread Co.* v. *Joyce* (*s*), but none of the produce was sold in the United Kingdom. The mills were the property of an American Company which had been promoted, and the whole of the common stock of which was owned, by an English company. The board of the American company met weekly in New York, and the directors resident in America formed an executive committee which directed the current business between those meetings, and reported to each director, wherever resident. A majority, however, resided in this country; extraordinary meetings were to be held in Great Britain, and powers were reserved to these meetings to select the executive committee and to fix its remuneration and the term of its office, to appoint the higher-paid officers of the company, to borrow money on the company's credit, and so on. The meetings in England were in fact held every fortnight; they criticized and called for information not only as to dividends and finance, but also with regard to the working of the various mills both on its technical and its trading side. "The whole

(*r*) Per PHILLIMORE, J., at p. 632.

(*s*) (1913), 6 Tax C. 1, 163, *supra*, p. 95; see also *Bradbury* v. *English Sewing Cotton Co., Ltd.*, [1923] A. C. 744, *infra*, pp. 227, 229.

purse-strings in the sense of money coming in by borrowing" were "kept most zealously at Manchester" (*t*). "The directorate in Manchester was a directorate of paramount authority, as is shown not only by the fact that the reserved subjects are kept for them in extraordinary session, but by this, that as the Commissioners found, they were constantly supervising and guiding the policy of the company, even as regards matters which belonged to manufacture and trading" (*u*). It was held that the Commissioners had evidence before them on which they could come to the conclusion of fact at which they arrived, that the head and seat and directing power of the company were in the United Kingdom, and that therefore the company was liable to tax under Case I. upon the whole of its profits.

In *Mitchell* v. *Egyptian Hotels Co.* (*v*) again, the business being that of two hotels in Egypt, no transactions which actually earned profit were carried on in this country; but in this case there was no constant supervision and guidance by a board of directors in this country; there was a local board in Egypt, under whose orders the hotels were managed by the company's servants. The board of directors in the United Kingdom retained the rights to fix the remuneration of the local board, and to decide at what period a balance of profit or loss should be struck; but they had not in fact exercised either of these rights. The accounts were made up in Egypt to the end of the usual financial year, and reported by the local board to the board of directors for the annual general meeting of the company, which was held in London. The board of directors met only once during the year of assessment, when they recommended a dividend and authorized the raising of a loan out of which to pay it, rather than withdraw money from Egypt and thus deplete the working capital in that country. It was held that the company was not liable to pay tax under Case I. on the whole of its profits, but only under Case V.

(*t*) Per COZENS-HARDY, M.R., at p. 29.
(*u*) Per Viscount HALDANE, L.C., at p. 164.
(*v*) *Supra*, p. 93.

upon such part as was remitted to this country. It will be observed from this decision that the mere operations of declaring a dividend, and of raising capital, are not sufficient to place "the head and seat and directing power" in this country, so as to constitute a "trade carried on in the United Kingdom"; nor is an ultimate right of control sufficient, if it is not exercised in fact (*w*). But either of these factors will probably be sufficient to make the company "resident" in the United Kingdom (*x*).

In *Swedish Central Rail. Co., Ltd.* v. *Thompson* (*y*), the company owned a railway in Sweden, which was let on lease, and for which it received rent. It was incorporated and had its registered office in the United Kingdom. The general meetings of the shareholders and the meetings of the board were held in Sweden, the rent was paid there, dividends were declared there, and no part of the profits was remitted to this country, except what was required for payment of dividends to shareholders and interest to debenture-holders in the United Kingdom; the majority of the shareholders were of Swedish nationality. There was a banking account in London; a committee of three of the directors was empowered to draw cheques on that account, to deal with transfers, and to seal stock and share certificates. Transfers of shares were made and registered in London, where the accounts of the company were made up and audited. The company was held to be "resident" in the United Kingdom and to be taxable in respect of the rent under Rule 1 of Case V. (*z*).

The business of the *Egyptian Delta Land Company* (*a*) was the holding and development of land in Egypt. The

(*w*) *Vide supra*, p. 94.

(*x*) See *Swedish Central Rail. Co., Ltd.* v. *Thompson*, [1925] A. C. 495, *infra*; cf. *Aramayo Francke Mines, Ltd.* v. *Eccott*, [1925] A. C. 634, *supra*, p. 96.

(*y*) [1925] A. C. 495, see per Lord Cave, L.C., at pp. 499, 500; 9 Tax C. 342, pp. 344—345; *supra*, pp. 91, 94.

(*z*) No question therefore arose as to the carrying on of a trade; but see "Residence," *supra*, p. 90.

(*a*) *Todd* v. *Egyptian Delta Land and Investment Co., Ltd.*, [1928] 1 K. B. 152; [1929] A. C. 1; *supra*, pp. 91, 94.

directors resided permanently in Egypt, all meetings of the company and of the board were held there; the register of transfers was kept and certificates were issued in Cairo, the accounts were made up and audited there; dividends were declared in Cairo, and paid there only. The company was registered in this country and had its registered office in London, where the transfers of shares were kept, and where there was a secretary who did formal business and occasionally dealt with correspondence from shareholders. The company was held not to be resident, nor to be carrying on a trade, in the United Kingdom.

Separate or Subsidiary Companies.

Where a company which resides or carries on business in the United Kingdom has relations with another company which carries on operations abroad, the question often arises whether those operations form part of the business of the former company; in other words, whether the latter company is independent of the former or subsidiary to it. The answer to this question depends not on the financial control, not, that is to say, on the ownership of the greater part or the whole of the shares in the second company, but on the direction of the business (*b*).

Owing to the conditions imposed by the company laws of certain of the United States, many of the companies in regard to which such questions have arisen have been companies incorporated in the United States to hold property in the interest of British companies. The mere fact that the British company holds the majority of the shares (or all that the American law applicable allows), is not sufficient to make it taxable under Case I. on the whole of the profits of the American company, even though the con-

(*b*) If the English company controls the business of the foreign company, then the English company is assessable under Case I. on the profits of that business; if it holds shares in the foreign company without controlling the business, it is assessable on the income of those shares, under Case V. r. 1, *vide infra*, p. 218; if the holding of shares is large, the question in the text may therefore become academic.

sent of the English company is sought before the American declares a dividend (*c*).

"A company may control another company; but it does not necessarily follow because an individual controls the company, or the company controls the company, or the company controls the individual, that the business carried on by the person or company controlled is necessarily a business carried on by the controller; and particularly is that the case when the machinery of companies is used and the controller is a company" (*d*).

"The control of individual corporators is something wholly different from the management of the business itself. Nor is this principle less true when the holding of the individual corporator is so large that he is able to override the wishes of the other corporators in matters relating to the control of the business of the company. The extent, but not the nature, of his power is changed by the magnitude of his holding" (*e*).

Each case of this kind raises, however, a question of fact (*ee*), and where the business is carried on by means of the plant and property of the English company and with working capital provided by it, the English company may be far more than merely the holder of shares in the American company, and may stand towards the latter in the relation of principal and agent. In such a case the English company is taxable under Case I. in respect of the whole profits of the American business (*f*).

(*c*) *Bartholomay Brewing Co.* v. *Wyatt*, [1893] 2 Q. B. 499; as to taxation under Case V. of the portion of the profits brought to this country, *vide infra*, p. 232; *Kodak, Ltd.* v. *Clark*, [1902] 2 K. B. 450; [1903] 1 K. B. 505.

(*d*) Per PHILLIMORE, J., in *Kodak, Ltd.* v. *Clark*, [1902] 2 K. B. at p. 459.

(*e*) Per FLETCHER MOULTON, L.J., in *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. at p. 98. (*ee*) *Vide supra*, pp. 94—100.

(*f*) *Apthorpe* v. *Peter Schoenhofen Brewery Co., Ltd.* (1899), 4 Tax C. 41; *St. Louis Breweries, Ltd.* v. *Apthorpe* (1898), *ibid.* 111, as explained by FLETCHER MOULTON, L.J., in *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. at pp. 101, 102. The two former cases were distinguished in *Kodak, Ltd.* v. *Clark, supra*, note (*c*), on the ground that the minority shareholders were not found to be independent people, as they were in the *Kodak* case, but this ground of distinction is no longer necessary in view of the decision in *Gramophone and Typewriter, Ltd.* v. *Stanley*. In *United States Brewing Co.* v. *Apthorpe* (1898), 4 Tax C. 17, the committee that managed the American business was actually

An English company owned all the shares in a German company; the members of the board of management of the German company were also directors of the English company, which nominated the members of the board of supervision of the German company. When the German company was first formed it had other shareholders (holding 460 out of 1,000 shares) who brought in considerable capital; their shares had all been acquired by the English company, but there was no evidence that the German company had ever become a sham company or a mere cloak for the English company. The requirements of the German company's statutes and of German company law had always been carefully fulfilled. "At any time the English company . . . . might have sold any proportion of [the shares] to independent corporators, and the latter would have found the affairs of the German company in strict order, just as though it had been carried on throughout as a company in which the shares were held in many hands." It was held that the business of the German company was not carried on by the English company, and that the latter were not liable to pay income tax upon a sum of money which had not been remitted to this country (*g*) because it had been written off to meet depreciation of patents (*gg*).

Trade exercised within the United Kingdom by a Non-Resident Person: Agency.

A person, although not resident in the United Kingdom, may exercise a trade within it, so as to be taxable on the profits of that trade (*h*); but that trade may of course be

appointed by the English company. The history of the subject will be found in the judgment of SCRUTTON, L.J., in *Inland Revenue* v. *Sansom,* [1921] 2 K. B. 492, at pp. 506 *sqq.*

(*g*) *Gramophone and Typewriter, Ltd.* v. *Stanley,* [1908] 2 K. B. 89; the passage cited appears at p. 101. The principle upon which the decision was based is stated at p. 101, *supra.* It goes further than the decision in *Nobel Dynamite Trust Co.* v. *Wyatt,* [1893] 2 Q. B. 499, which is not now, therefore, of much importance.

(*gg*) A sum so written off forms part of the profits of a company, although it is not available for distribution as dividends, *vide infra,* p. 264.

(*h*) Sched. D, 1 (a) (iii); *infra,* p. 497; *vide supra,* p. 89; as to residence or non-residence, *vide infra,* p. 270.

separate from any trade which he carries on either in his own country, or from his own country with other countries outside the United Kingdom (*h*). "The question is not whether [he carries] on business in this country. It is whether [he exercises] a trade in this country so that profits accrue to [him] from the trade so exercised" (*i*).

The trades exercised by non-residents in the United Kingdom are usually carried on by means of what may compendiously be termed "agents"; and a resident agent is assessable in the place of a non-resident principal (*j*), though if the principal comes to this country he may be assessed in his own name (*k*).

The liability to tax in respect of a trade has frequently depended on the question whether the person resident in this country carries on business on his own account, or as an "agent"; but it does not turn strictly upon the relation of the parties as principal and agent under the law of contract, and it is important to bear in mind that the liability is imposed by Schedule D itself, and that the rules (with the possible exception of rule 7 (*l*)), which provide for assessment in the name of resident persons are merely machinery and do not themselves impose the charge. The first question therefore is whether a trade is exercised in the United Kingdom; the second whether, if so, there is in the United Kingdom a person chargeable to the tax (*ll*).

A non-resident person, then, is assessable in the name of, and for any profits arising to him directly or indirectly through, any factor, agent, receiver, branch or manager (whether such factor, &c. receives the profits or not) (*m*), as

(*h*) *A.-G.* v. *Alexander* (1874), L. R. 10 Ex. 20.

(*i*) Per ATKIN, L.J., in *Smidth* v. *Greenwood, infra,* p. 109, [1921] 3 K. B. at p. 593.

(*j*) General Rules 5 to 14, *infra,* p. 518. See Chap. XI., *infra,* p. 275.

(*k*) *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89; *infra,* p. 108.

(*l*) Rule 7, *infra,* p. 518; this rule does not apply to British subjects, firms or companies. It first appears with other portions of the General Rules here referred to in sect. 31 (3) of the Finance (No. 2) Act, 1915, and its effect is considered *infra,* p. 276.

(*ll*) See *Crookston* v. *Furtado,* [1911] S. C. 217; 5 Tax C. 602; *infra,* p. 105, where the two questions were kept distinct.

(*m*) General Rules, rr. 5, 6, *infra,* p. 518; these rules (like their predecessors in sect. 31 of the Finance (No. 2) Act, 1915) provide only for the method of assess-

well as any resident person with whom he carries on business under some arrangement by which the resident person gets little or no profit (*n*); but business done through a broker or general commission agent (not being an authorised person carrying on the regular agency of the non-resident) (*o*), does not make the non-resident person chargeable, nor does such a person become chargeable under these rules merely by reason of any transactions with other non-residents (*p*). There are special provisions applying to the estimation of profits in certain of these cases; where the true profits of the business carried on in this country cannot readily be ascertained, the Commissioners may estimate them at a percentage of the turnover (*q*); and upon application, profits of manufacture and production outside the United Kingdom will be eliminated, and the assessment made or amended accordingly (*r*).

Trade exercised by a Resident Person on behalf of a Non-Resident.

The mere employment of an agent or setting up of a branch in this country to buy goods for export and for sale in another country does not constitute the exercise of a

ment, and do not impose a fresh liability: *Greenwood* v. *Smidth,* [1921] 3 K. B. 583; [1922] 1 A. C. 417, *vide infra,* p. 276; *Maclaine* v. *Eccott, infra.* The profits of an English company which has an agent abroad controlling its business, who has in his turn an agent in England, cannot be assessed by assessing the foreign agent in the name of the English agent: *Aramayo Francke Mines* v. *Eccott,* [1925] A. C. 634.

(*n*) See note (*l*), previous page.

(*o*) Rule 10, *infra,* p. 519; *Gavazzi* v. *Mace; Boyd* v. *Stephen* (1926), 135 L. T. 634. See Act of 1925, s. 17, *infra,* p. 573, which seems to get rid of the distinction made between a broker and regular agent in *Wilcock* v. *Pinto,* [1925] 1 K. B. 30, *infra,* p. 110.

(*p*) Rule 11; *Maclaine* v. *Eccott,* [1926] A. C. 424; *Muller* v. *Lethem,* [1927] 1 K. B. 780; 13 Tax C. 126, *infra,* p. 105. Neither Rule 10 nor Rule 11 prevents the non-resident person from being chargeable in the name of his agent where the agent in fact receives the profits: *Scales* v. *Atalanta S.S. Co.* (1925), 41 T. L. R. 591; *Maclaine* v. *Eccott,* [1926] A. C. per Lord Cave, L.C., at p. 436.

(*q*) General Rules, r. 8, *infra,* p. 518; see note (*l*) on previous page, and *vide infra,* p. 277. Whatever may have been the limits of its application when it was first enacted as sect. 31 (4) of the Finance (No. 2) Act, 1915, Rule 8, where it now stands, may be applied in any case where a non-resident is charged in the name of a resident.

(*r*) Rule 12, *infra,* p. 519; see also p. 278, *infra.*

trade within the United Kingdom even if the branch is conducted by a partner (*s*). This was decided under the Act of 1842, but is still good law; although it is true that if a trade were actually exercised within the United Kingdom, the rules of assessment would now make a branch of any kind chargeable with the tax (*t*). Where an American firm and an English firm carried on on joint account transactions in cotton bought in America and usually sold in this country (though on rare occasions sold in America), the profits of these transactions were held to be profits of a trade exercised in the United Kingdom (*u*).

In the enquiry whether a non-resident person exercises a trade in this country so that profits accrue to him therefrom (*v*), "it must now be taken as established that, in the case of a merchant's business, the primary object of which is to sell goods at a profit, the trade is (speaking generally) exercised or carried on . . . . at the place where the contracts are made. No doubt reference has sometimes been made to the place where payment is made for the goods sold or to the place where the goods are delivered, and it may be that in certain circumstances these are material considerations; but the most important, and, indeed, the crucial, question is, where are the contracts of sale made?" (*x*). But the test is not confined to the sale of goods: it is equally applicable to such businesses as the transmission of telegraphic messages (*y*) or the carriage of goods by sea (*z*).

If, then, contracts which entitle the persons making them to receive profits are habitually made in the United King-

(*s*) *Sulley* v. *A.-G.* (1860), 29 L. J. Ex. 464; the branch was carried on by a partner resident in England; the goods bought by him were sold in America; this decision was approved in *Grainger* v. *Gough, infra,* p. 106; but not followed in *John Hood, Ltd.* v. *Magee,* [1918] 2 I. R. 34; 7 Tax C. 327, *supra,* p. 96.

(*t*) *Vide supra,* p. 103; *Greenwood* v. *Smidth,* [1921] 3 K. B. 583; [1922] 1 A. C. 417, *infra,* p. 109.

(*u*) *Morden, Rigg & Co.* v. *Monks* (1923), 8 Tax C. 450.

(*v*) Per ATKIN, L.J., *loc. cit.* in note (*i*) on p. 103, *supra.*

(*x*) *Maclaine* v. *Eccott,* [1926] A. C. 424, per CAVE, L.C., at p. 432. The earlier cases cited in notes (*b*), (*c*), (*d*), *infra,* were approved or followed, and *Crookston* v. *Furtado,* [1911] S. C. 217, was overruled on this point.

(*y*) *Erichsen* v. *Last* (1881), 8 Q. B. D. 414, *infra,* p. 107.

(*z*) *Tarn* v. *Scanlan; Nielsen* v. *Collins; Muller* v. *Lethem,* [1928] A. C. 34, *infra,* p. 111.

dom by or on behalf of a non-resident, he is so exercising a trade in the United Kingdom, even though the fulfilment of the contracts takes place wholly or in part abroad (*b*). But if the contracts are made abroad, the mere fact that they may have been secured through canvassing done (*c*), or that help has been given in the negotiation and execution of the contracts (*d*), by an agent resident in this country does not by itself constitute the exercise of such a trade (*c*). On the other hand, the non-resident person may be carrying on such a trade in this country, and a resident person may be his agent for the purpose, although the property in the goods to be sold passes to the agent and although the goods are sold in this country by the agent to his customers under contracts which do not bind the non-resident principal (*e*).

"There is a broad distinction between trading *with* a country and carrying on a trade *within* a country. . . . . Many merchants and manufacturers export their goods to all parts of the world, yet I do not suppose that any one would dream of saying that they exercise or carry on their trade in every country in which their goods find customers. . . . . The word 'agent' obviously cannot extend to every agent for whatever purpose he may be employed, as, for example, to an advertising agent" (*f*).

". . . . It cannot, in my opinion, be denied that the mere fact of a foreigner selling his goods to English customers does not constitute an exercise of his trade within this country, although he is trading with this country. But it was argued that the habitual employment of agents to obtain orders and transmit them abroad constitutes the act of selling to English customers an exercise of trade in this country. I am unable to accede to that argument" (*g*).

(*b*) *Erichsen* v. *Last, supra; Werle* v. *Colquhoun* (1888), 20 Q. B. D. 753; *Wilcock* v. *Pinto,* [1925] 1 K. B. 31; *Maclaine* v. *Eccott; Tarn* v. *Scanlan, supra;* cf. *Lovell & Christmas, Ltd.* v. *Commr. of Taxes,* [1908] A. C. 46.

(*c*) *Grainger & Son* v. *Gough,* [1896] A. C. 325.

(*d*) *Smidth* v. *Greenwood,* [1922] 1 A. C. 417, *supra.*

(*e*) *Weiss, Biheller & Brooks, Ltd.* v. *Farmer,* [1923] 1 K. B. 226, *infra,* p. 109.

(*f*) *Grainger* v. *Gough,* [1896] A. C. per Lord HERSCHELL at pp. 335, 337. As to receipt of the profits by the agent, see note (*p*) on p. 104.

(*g*) *Ibid.,* per Lord DAVEY at p. 346.

In some of the decided cases it was sought to show that the person assessed as agent was in fact a principal (*h*); in none of them was this contention made out; but where it can be shown that the person resident in this country *bonâ fide* acquires the property in the goods consigned to him, sells them for his own profit and bears the risk of loss, the fact that (as is now the practice in regard to many classes of goods) the resident is obliged to adhere to a list of prices fixed by the non-resident would not be sufficient to constitute the non-resident a person carrying on a trade in this country so that profits accrue to him therefrom (*i*).

The presence or absence of a non-resident's name in business directories and so forth does not of itself indicate that he is or is not exercising a trade within the United Kingdom (*k*).

Course of Business between Resident and Non-Resident.

The broad principles upon which non-residents have or have not been held to exercise a trade within the United Kingdom have been stated above. They cannot be illustrated without a brief statement of the course of business which led to the conclusions reached in some of the decided cases. The mere maintenance of a buying branch does not constitute the exercise of a trade (*l*). A telegraph company owning marine cables connected with the Post Office telegraphs, receiving messages in the United Kingdom both at an office of their own and through the General Post Office, and employing in this country an agent and about forty clerks and electricians, were held to be exercising a trade in the United Kingdom (*m*).

(*h*) *E.g.*, in *Watson* v. *Sandie & Hull*, and *Weiss, Biheller & Brooks* v. *Farmer*, *infra*, pp. 108, 109.

(*i*) Rule 7 of the General Rules was introduced, it is submitted, to prevent the revenue suffering from merely colourable arrangements of this kind; but see p. 276, *infra*.

(*k*) *Grainger* v. *Gough*, *supra*; *Weiss, Biheller & Brooks* v. *Farmer*, *infra*, p. 109.

(*l*) *Sulley* v. *A.-G.*, *supra*, p. 105; but see *Morden, Rigg & Co.* v. *Monks* (1923), 8 Tax C. 450, *supra*, p. 105.

(*m*) *Erichsen* v. *Last*, *supra*, p. 106; the contrary was argued on the ground that the cable-ends in this country were not themselves profitable. Cf. *N. Z. Commrs. of Taxes* v. *Eastern Extension Telegraph Co., Ltd.*, [1906] A. C. 526.

Several cases have been decided in regard to trade in French wines. Where orders for the wines were received in this country, whether by an agent paid on commission or otherwise, a *del credere* agent, or a branch office of the French firm, the French firm were exercising a trade in this country (*n*), but the French firm were held not to be doing so where the contracts for sale and the deliveries of goods were made in France, although they employed canvassers here who solicited orders and transmitted them, and who delivered the invoices to the customers, and in some cases received and remitted the price paid for the goods (*o*).

On the other hand, where a Glasgow firm effects the whole of the chartering and keeps the accounts, in respect of a ship which trades with this country and is owned by a Norwegian company, the latter exercises a trade in the United Kingdom (*p*).

Packers in America consigned their goods to representatives in England who invoiced the goods in their own name at prices fixed by themselves but rendered statements to the American firm, crediting themselves with commission and other charges, and remitting to or drawing upon the American firm, as the case might be; the American firm took the risk of loss, and the property in the goods never passed to the English representatives. The American firm were held to be exercising a trade in this country (*q*). The same conclusion was reached where the English representatives accepted orders and made delivery in this country, although they had to obtain the authority of the American company before accepting any order, and although they paid the freight (but not apparently the marine insurance) from Boston (*r*).

(*n*) *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89; *Pommery & Greno* v. *Apthorpe* (1886), 2 Tax C. 182; *Werle* v. *Colquhoun* (1888), 20 Q. B. D. 753.

(*o*) *Grainger* v. *Gough, supra,* p. 106.

(*p*) *Wingate* v. *Webber* (1897), 24 R. 939; 3 Tax C. 569.

(*q*) *Watson* v. *Sandie & Hull,* [1898] 1 Q. B. 326.

(*r*) *Thos. Turner, Ltd.* v. *Rickman* (1898), 4 Tax C. 25. The facts were very similar, and led to the same conclusion, in *Macpherson* v. *Moore,* [1912] S. C. 1315; 6 Tax C. 107. See also *Rowson* v. *Stephens* (1929), 8 A. T. C. 137.

Where the sole representatives in the United Kingdom were *del credere* agents, who sold at the best prices obtainable the gas mantles produced by a Dutch company, credited the Dutch company with the cost price of the goods sold plus ten per cent., took a commission of five per cent., and divided the balance of the profits with the Dutch company in a fixed ratio (although the property in the goods passed to the agents, and the Dutch company were not parties to the contracts between the agents and their customers), the Dutch company were found to be exercising a trade within the United Kingdom, and to be taxable in the name of their English representatives (*t*).

Where a foreign bank employs a bank in the United Kingdom to float loans on the London market, and the British bank issues prospectuses, collects the money subscribed and remits it to the foreign bank or to the borrowers, subject to a deduction of commission, the foreign bank is not in a position analogous to that of a foreign merchant selling goods in this country through an agent, and is not exercising a trade within the United Kingdom (*u*).

A Danish firm resident at Copenhagen were manufacturers of machinery which they exported all over the world. They had an office in London in charge of a whole time servant, who was a qualified engineer. He received enquiries in London from potential customers, forwarded to Copenhagen particulars of their requirements, and gave purchasers in this country his advice in erecting the machinery when supplied. But the contracts for sale were made in Copenhagen and the goods shipped there f.o.b. The firm were held not to be carrying on a trade in the United Kingdom (*x*).

Cotton merchants at Alexandria sold cotton to every part of the world. They had an authorized agent (*y*) in England

(*t*) *Weiss, Biheller & Brooks* v. *Farmer,* [1923] 1 K. B. 226, *supra,* p. 106.

(*u*) *Yokohama Specie Bank, Ltd.* v. *Williams* (1915), 6 Tax C. 634; the correctness of this decision was doubted in *Maclaine* v. *Eccott,* in C. A., 10 Tax C. pp. 555, 568.

(*x*) *Greenwood* v. *Smidth,* [1921] 3 K. B. 583; [1922] 1 A. C. 417, *supra,* p. 105.

(*y*) *Vide infra,* p. 277.

who (a) sold cotton for them in this country at prices and on terms fixed by them, but had a discretion as to the persons to whom he would sell; and (b) obtained offers for the purchase of cotton, which he transmitted to the firm at Alexandria for acceptance or rejection; on receipt of instructions accepting an offer, the agent made the contract. The goods were shipped c.i.f. Bills were drawn and discounted in Alexandria, and the discounting banks forwarded them with the bills of lading attached, and presented them to the purchaser's bank in this country. The contracts, both in (a) and (b) transactions, were held to be made in England, and the Alexandria firm to be carrying on a trade in this country (*z*).

A firm in Java were employed in Java by planters and others as general commission agents to effect sales of produce in England, which they did through agents in England; the goods were consigned from Java direct to the purchasers, some of whom were not in the United Kingdom; the Java firm were held in so doing to be exercising a trade in the United Kingdom; but the profits assessable were held not to include the profits of sale to non-residents, where they were not received by the London agents (*a*).

Shipping companies in Denmark and Holland carried on services between those respective countries and England, in one case jointly with an English company, who acted as shipping agents; all the foreign companies had firms or companies in England as their shipping agents; in one case the English agent had not been appointed directly by the company, but by its managers and agents in Holland. The shipping agents accepted freights, booked passages and so forth. The companies were held to be taxable in the names of their agents; the Danish company for profits made by cargoes shipped from this country, and the Dutch companies

(*z*) *Wilcock* v. *Pinto*, [1925] 1 K. B. 30, *supra*, p. 104.

(*a*) *Maclaine* v. *Eccott*, [1926] A. C. 424, *supra*, p. 104. In the Courts below, other classes of transactions (which cannot be briefly summarized) were also considered, and *Wilcock* v. *Pinto* was followed, 132 L. T. 173; 10 Tax C. 481. *Gavazzi* v. *Mace*, *Boyd* v. *Stephen* (1926), 135 L. T. 634; *Belfour* v. *Mace* (1928), 138 L. T. 338, were decided on similar principles.

for profits made by shipping goods or passengers to or from England, so far as the contracts were made in this country; but not as regards contracts made with residents abroad for shipments to England where the English agents did not receive the profits (*a*).

Interest on Investments: Option to tax under Case III. or Cases IV. and V.

Many forms of trade necessitate the making of investments for the purposes of the trade; the leading instance being the business of insurance societies. The Crown has the option of taxing the profits of the trade under Case I., or the interest from the investments under Case III. or Cases IV. and V. (*b*); and naturally chooses the Case which gives it the highest yield of tax (*c*).

"... Inasmuch as the Income Tax Acts do not only deal with profits in the true sense of the word as a commercial profit, but also deal with and impose taxes upon the interest of investments, the Crown has always been allowed when investments are held by a trading company, if it suits them, to say, 'We will charge you a tax upon the produce of your investments, and we won't charge the tax upon your profits.' The Crown cannot charge the tax on both—that is to say, it cannot take a trading account which has money —its assets and investments—and first of all charge income tax upon the produce of investments, and then over and

(*a*) *Tarn* v. *Scanlan; Nielsen* v. *Collins; Muller* v. *Lethem,* [1928] A. C. 34; 13 Tax C. 91. Contrast *New Zealand Shipping Co.* v. *Thew, supra,* p. 96.

(*b*) See Chaps. VII. and VIII.; and especially *Gresham Life, &c.* v. *Styles, Edinburgh Life, &c.* v. *L.-A.*, and *Hancock* v. *General Reversionary, &c., infra,* pp. 198—200, where the difficult questions were discussed to which the right to deduct tax gives rise in cases of this kind.

(*c*) *Scottish Mortgage Co.* v. *McKelvie* (1886), 14 R. 98; 2 Tax C. 165; *Smiles* v. *Northern Investment Co.* (1887), 14 R. 734; 2 Tax C. 177; *Norwich Union, &c.* v. *Magee* (1896), 3 Tax C. 457; *Revell* v. *Edinburgh Life, &c.* (1900), 5 Tax C. 221; *Liverpool and London and Globe, &c.* v. *Bennett,* [1912] 2 K. B. 41; [1913] A. C. 610; *Butler* v. *Mortgage Co. of Egypt, Ltd.* (1928), 139 L. T. 29, *infra,* p. 226. See, however, *Bradbury* v. *English Sewing Cotton Co.*, [1923] A. C. 744, *infra,* p. 227, note (*d*); and cf. the reasons given by Lord SHAW in that case, and in the *Liverpool and London* case. As to profit made on realizing investments, *vide infra,* p. 122. Special provisions dealing with the income of a foreign or colonial assurance company will be found in Case III. r. 3, *infra,* p. 507.

above charge on the profits. It must elect between the two. The reason is very obvious, because if the Crown were not allowed to do that, the Crown would lose the produce of an investment according to the extent whether that investment was held by a private individual or by a trading company" (*d*).

Where the tax on the interest has not been deducted at the source (*e*), the interest may be added in computing the profits of the trade for assessment under Case I. (*f*). The interest so added may include interest on investments abroad which is not remitted to the United Kingdom, whether the investments are made to satisfy the laws of the country where business is carried on, or are made voluntarily out of accumulated profits or to provide capital for the purposes of the trade (*g*). It may also include interest on advances made on the security of real property situate abroad, where the business of making such advances is inextricable from that of making advances on the security of produce imported to this country (*h*).

Profession, Employment or Vocation.

The income tax is leviable under Case II. of Schedule D (*i*) in respect of "any profession, employment or vocation"; but Schedule D no longer applies to the profits of

(*d*) *Revell* v. *Edinburgh Life, &c.* (1900), 5 Tax C., per Lord DUNEDIN, L.P., at p. 226; cited by COZENS-HARDY, M.R., [1912] 2 K. B. at p. 51.

(*e*) *Vide infra*, p. 182.

(*f*) *Scottish Union, &c.* v. *Smiles; Northern Assurance, &c.* v. *Russell* (1889), 16 R. 461; 2 Tax C. 551; *Clerical, Medical and General, &c.* v. *Carter* (1889), 22 Q. B. D. 444; *Norwich Union, &c.* v. *Magee; Revell* v. *Edinburgh Life, &c.; Liverpool and London and Globe, &c.* v. *Bennett, supra.*

(*g*) *Norwich Union, &c.* v. *Magee, supra; Liverpool and London and Globe, &c.* v. *Bennett, supra.* Interest on investments abroad which was not remitted to this country was held not to be taxable in *Gresham Life, &c.* v. *Bishop*, [1902] A. C. 287, and other cases cited therewith, *infra*, p. 233; but in those cases the assessment had been made under Case IV. If it had been made under Case I., apparently the result would have been as indicated in the text.

(*h*) *Smiles* v. *Australasian Mortgage and Agency Co.* (1888), 25 S. L. R. 645; 2 Tax C. 367, *supra*, p. 82. If it had not been inextricable, it seems probable that the interest on the first class of advances would have come within the purview of Case IV.; but upon the facts the Court held that it did not. Contrast *Butler* v. *Mortgage Co. of Egypt, Ltd., supra*, note (*c*).

(*i*) *Infra*, p. 498.

any "office or employment," in which one individual is employed by another individual, firm or body of persons (*k*); these are now chargeable under Schedule E (*l*) like those of public offices or employments of profit, *i.e.*, offices held under the Crown or under companies, &c. (*m*).

"Employment" in Case II., then, does not include the employment of one man by another; as here used, it is synonymous with vocation. "A man may employ himself so as to earn profits in many ways . . . . the word 'vocation' is analogous to 'calling,' a word of wide signification, meaning the way in which a man passes his life"; accordingly, the calling of a professional bookmaker is a vocation within Case II. (*n*). But a man who supports himself by private betting with bookmakers does not exercise a trade or vocation, and is not taxable (*o*). Money paid to a land agent as commission incident to services performed in relation to the carrying out of a contract of sale is part of the profits arising out of the vocation of the land agent, as such (*p*). But a trustee under a settlement, which provides that he shall be paid an annual remuneration out of the trust income, is not exercising an employment or vocation, and is not directly assessable (*q*).

As the profits of trades are taxable under Case I. and the amount of profits and gains is ascertained in the same

(*k*) With the possibly negligible exception of "employments" carried on outside the United Kingdom by persons residing in this country (not being offices or employments originally chargeable under Sched. E), see observations on Case V. and *Foulsham* v. *Pickles, infra,* p. 231.

(*l*) Finance Act, 1922, s. 18 (1), *infra,* p. 546; see Chap. XI. The rule applicable to Case II. must now be read in a much restricted sense.

(*m*) See Sched. E and Rule 6 thereof, *infra,* p. 513.

(*n*) *Partridge* v. *Mallandaine* (1886), 18 Q. B. D. 276, see per DENMAN, J., at p. 278.

(*o*) *Graham* v. *Green,* [1925] 2 K. B. 37.

(*p*) *Humphrey* v. *Peares,* [1913] 2 Ir. R. 462; 6 Tax C. 201. On the question whether more than one vocation is being carried on, see *Elliott* v. *Guastavino* (1924), 8 Tax C. 632.

(*q*) *Baxendale* v. *Murphy,* [1924] 2 K. B. 494; the annual payment was rightly made under deduction of tax, *vide infra,* p. 186. The contrary is the case where a payment is made to a solicitor trustee for professional work: *Jones* v. *Wright* (1927), 44 T. L. R. 128.

way under either Case, the distinction between trades on the one hand and "professions, employments and vocations" (in the sense in which those words are now used in Schedule D) on the other, is not of much practical importance. A company indeed cannot exercise a profession (*r*); but apart from any topics dealing with companies, whatever is said in connection with Schedule D as to trades is, in general, true also as to professions.

(*r*) Cf. *Wm. Esplen, Ltd.* v. *I. R.*, [1919] 2 K. B. 731.

CHAPTER VI.

PROFITS OF TRADES AND PROFESSIONS: SCHEDULE D, CASES I. AND II.

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Basis of Assessment: Profits and Gains.

TAX under Schedule D as regards trades, professions, employments and vocations is charged "in respect of the annual profits or gains arising or accruing from" them (*a*); as regards trades, it is computed "on the full amount of the balance of the profits or gains" (*b*); as regards professions, &c., "on the full amount of the balance of the profits, gains and emoluments" (*c*). In computing "the amount of the profits or gains to be charged" certain deductions are prohibited (*d*); and subsidiary provisions refer to "profits or gains" (*e*) or to "profits" (*f*).

(*a*) Sched. D, 1 (a), *infra*, p. 597. The word "annual" in this phrase does not mean that there must be profits made in more years than one: *Martin* v. *Lowry*, [1927] A. C. 312; indeed it seems to have very little effect, if any.

(*b*) Rule applicable to Case I., *infra*, p. 598. (*c*) Rule applicable to Case II.

(*d*) Sect. 209, *infra*, p. 464, and rules applicable to Cases I. and II. rr. 1 (1) and 3, *infra*, p. 598. In the corresponding third rule contained in the Act of 1842, the phrase "profits or gains" was "loosely and inaccurately" used to mean gross receipts (per Lord HERSCHELL in *Gresham Life, &c.* v. *Styles*, [1892] A. C. at pp. 323—4); it is not so used in the Acts now current.

(*e*) *E.g.*, Cases I. and II. rr. 1 (2), 4—8; General Rules, 18—21.

(*f*) *E.g.*, Cases I. and II. rr. 15, 16, 17.

There is no distinction between "profits" and "gains" (*g*), and in fact all these varying and somewhat pompous phrases mean the same thing,—the net profits of the trade or profession computed by reasonable business methods, subject to any specific directions contained in the Income Tax Acts.

The truth of the above proposition is not always appreciated; the following authoritative statements are therefore cited to show the broad principle upon which assessments in respect of trades and professions are to be made:—

"What is the meaning of 'profits or gains' . . . . ? Unless the context requires a different meaning or the words appear to be used throughout the Act in another sense, I think they must be construed according to their ordinary signification. When we speak of the profits or gains of a trader, we mean that which he has made by his trading. Whether there be such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise" (*h*).

"The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. . . . . Unless and until you have ascertained that there is such a balance, nothing exists to which the name 'profits' can properly be applied" (*i*).

"It is plain that the question of what is or is not profit or gain must primarily be one of fact, and of fact to be ascertained by the tests applied in ordinary business. Questions of law can only arise when . . . . some express statutory direction applies and excludes ordinary commercial practice, or where, by reason of its being impracticable to ascertain the facts sufficiently, some presumption has to be invoked to fill the gap" (*k*).

(*g*) *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 A. C. 891, *supra*, p. 85, per Lord SELBORNE at p. 905; *Port of London Authority* v. *I. R.*, [1920] 2 K. B. 612.

(*h*) *Gresham Life, &c.* v. *Styles*, [1892] A. C., per Lord HERSCHELL at p. 322.

(*i*) *Russell* v. *Town and County Bank*, 13 A. C., per Lord HERSCHELL at p. 424, *infra*, p. 143.

(*k*) *Sun Insurance Office* v. *Clark*, [1912] A. C. 443, per Lord HALDANE at p. 455.

"The expression 'balance of profits and gains' implies, as has often been pointed out, something in the nature of a credit and debit account, in which the receipts appear on the one side and the costs and expenditure necessary for earning these receipts appear on the other side. . . . . Where a deduction is proper and necessary to be made in order to ascertain the balance of profits and gains, it ought to be allowed . . . . provided there is no prohibition against such an allowance . . . ." (*l*).

"Trade incomings are not profits of the trade till trade outgoings have been paid or allowed for and deducted.

"Rule 1 of the First Case of Schedule D does not, however, leave matters to the taking of a commercial account simpliciter; it provides that the duty shall be 'assessed, charged and paid without other deduction than is hereinafter allowed' (*m*); and this must mean, though it is not strictly expressed, without other deductions in the computation of the sum on which the duty is charged. Section 159 states it thus (*n*). . . . . Virtually both provisions mean that in computing the sum which when ascertained is to be charged with duty, only the enumerated deductions shall be lawfully allowable.

"The paradox of it is that there are no allowable deductions expressly enumerated at all, and there is in words no deduction allowed at all unless indirectly (*o*) . . . .

"The effect of this structure, I think, is this, that the direction to compute the full amount of the balance of the profits must be read as subject to certain allowances and to certain prohibitions of deductions, but that a deduction, if there be such, which is neither within the terms of the

(*l*) *Usher's Wiltshire Brewery, Ltd.* v. *Bruce,* [1915] A. C., per Lord PARKER at p. 458, *infra,* p. 132. See *Union Cold Storage Co., Ltd.* v. *Jones* (1924), 8 Tax C. 725, *infra,* p. 119; and *British Insulated, &c. Cables, Ltd.* v. *Atherton,* [1926] A. C. 205, *infra,* p. 142, where the passages quoted in the text were cited and applied, but the deductions claimed were held not to be "proper debit items."

(*m*) Rule 1 (1) of Sched. D, Cases I. and II. in the Act of 1918, *infra,* p. 498, is slightly different in wording, but this does not affect Lord SUMNER's argument.

(*n*) See now sect. 209 (1) (*a*), *infra,* p. 464.

(*o*) There are now positive directions with regard to deductions for depreciation, see Cases I. and II. rr. 6 and 7; but in general the structure is still as described by Lord SUMNER.

prohibition nor such that the expressed allowance must be taken as the exclusive definition of its area, is to be made or not to be made according as it is or is not on the facts of the case a proper debit item to be charged against incomings of the trade when computing the balance of profits of it" (*p*).

"Instead of saying that the duty shall be imposed on . . . . the amount of the profits . . . . it is imposed 'on the balance' of such profits. I have not been able to discover any difference in the meaning of the two phrases" (*q*).

"The general words 'profits and gains' or 'balance of profits and gains' are equally applicable whatever the commercial concern carried on may be" (*r*).

"(Case I.) plainly contemplates the preparation of a balance sheet in which proper trading disbursements and liabilities are to be set against trade assets, so that the surplus of the latter, if any, will represent the assessable profits or gains of the concern. . . . .

"The words ('profits or gains') (*s*) must be taken to mean not gross receipts, but profits and gains, the amount of which is to be estimated for the purposes of this Act" (*t*).

On the other hand, it must be borne in mind that expenses in order to be deductible in ascertaining profits must have been incurred for the purpose of earning the gross receipts; they must be wholly and exclusively laid out or expended for the purposes of the trade or profession (*u*). "It is not enough that the disbursement is made in the course of, or arises out of, or is connected with the trade, or is made out of the profits of the trade" (*v*). There is no deduction there-

(*p*) Per Lord SUMNER, [1915] A. C. at pp. 467, 468.

(*q*) Per Lord BLACKBURN in *Coltness Iron Co.* v. *Black*, 6 A. C. at pp. 333—4, *infra*, p. 127.

(*r*) *Gresham Life, &c.* v. *Styles*, [1892] A. C. 309, per Lord HALSBURY, L.C., at p. 315.

(*s*) In the 4th rule of the First Case in the Act of 1842, now Rule 3 (a), *infra*, p. 499.

(*t*) *Gresham Life, &c.* v. *Styles*, [1892] A. C. 309, per Lord WATSON at pp. 317, 319.

(*u*) Sched. D, Cases I. and II. r. 3 (a), *infra*, p. 499.

(*v*) *Strong* v. *Woodifield*, [1906] A. C. 448, *infra*, p. 134; per Lord DAVEY at p. 453.

fore for such expenses or losses as damages for negligence, or penalties for offences (*w*); or for fire insurance premiums, or depreciation of machinery, on premises owned by one trading company, but used solely by another (*x*).

On the other hand, "a sum of money expended, not of necessity and with a view to the immediate benefit of the trade, but voluntarily and on the ground of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade" (*y*). It is upon this principle that revenue expenditure for such objects as the provision of retiring allowances has been held to be properly debited (*z*).

Debits and Credits: In what Year?

Complicated questions sometimes arise as to the particular year in which an item may properly be debited or credited. Where a debit item has been entered in one year and the amount is in a later year repaid to the trader, because the liability is found not to be legally enforceable (*a*), or a smaller sum is accepted in discharge of the liability (*b*), or where goods have been requisitioned by the Government in one year and paid for in a later year (*c*), the payment or repayment should be credited in the accounts of the earlier year. Where a sum is paid for the cancellation of a contract, the payment should be credited in the year in which the agreement for the cancellation makes it payable and

(*w*) *Strong* v. *Woodifield, supra; I. R.* v. *von Glehn; I. R.* v. *Warnes, infra,* p. 121. A subscription to a hospital was disallowed in *Bourne & Hollingsworth, Ltd.* v. *Ogden* (1929), 45 T. L. R. 222.

(*x*) *Union Cold Storage Co., Ltd.* v. *Jones* (1924), 8 Tax C. 725.

(*y*) Per Lord CAVE, L.C., in *British Insulated, &c. Cables, Ltd.* v. *Atherton, infra,* p. 126, [1926] A. C. at p. 212.

(*z*) *Vide infra,* p. 141; and see *Mitchell* v. *B. W. Noble, Ltd., infra,* p. 130, note (*h*).

(*a*) *English Dairies, Ltd.* v. *Phillips* (1927), 11 Tax C. 597 (income tax); *Ford* v. *I. R.* (1926), 12 Tax C. 997 (excess profits duty).

(*b*) *Bernhard* v. *Gahan* (1928), 13 Tax C. 723. See also *Wright Sutcliffe, Ltd.* v. *I. R.* (1929), 8 A. T. C. 168 (excess profits duty).

(*c*) *I. R.* v. *Newcastle Breweries, Ltd.* (1927), 12 Tax C. 927 (excess profits duty).

should not be spread over the years in which profits would have accrued under the original contract if it had been carried out (*d*).

Destination of Profit Immaterial.

If there are profits in the sense above indicated, their destination is immaterial.

"The word 'profits,' as here (*e*) used, does mean the incomings of the concern after deducting the expenses of earning and obtaining them, before you come to an application of them even to the payment of creditors of the concern . . . .

"The gains of a trade are that which is gained by the trading, for whatever purposes it is used, whether it is gained for the benefit of the community, or for the benefit of individuals. Whether the benefit is to be obtained by dividends, or whether it is to be obtained by lightening and diminishing public burdens, it is the same" (*f*).

The effect of this principle upon the taxation of charitable institutions and public undertakings has already been seen (*g*). It applies equally to private enterprises (*h*); if a company makes profits it is taxable upon them whether it distributes them as dividends or carries them to reserve; but in certain circumstances a reserve fund, so far as it is necessary for the current business, may form an expense of the trade, and not part of the profits (*i*). There are express directions that the profits of a body of persons (which includes a company) are to be computed before any dividend

(*d*) *Short Bros., Ltd.* v. *I. R.* (1927), 136 L. T. 689; *Robinson* v. *I. R.* (1929), 8 A. T. C. 121 (excess profits duty).

(*e*) Act of 1842, s. 60, Sched. A, No. III., "a claim on or out of the said profits"; see now Act of 1918, Sched. A, No. III. r. 5, *infra*, p. 475.

(*f*) *Mersey Docks* v. *Lucas, supra*, p. 85; 8 A. C., per Lord SELBORNE, L.C., at pp. 903, 905; *City of Dublin Steam Packet Co.* v. *O'Brien* (1912), 6 Tax C. 101, *infra*, p. 128.

(*g*) Chap. V., pp. 83—87.

(*h*) *Last* v. *London Assurance Corpn.* (1885), 10 A. C. 438; *New York Life, &c.* v. *Styles* (1889), 14 A. C. 381, *supra*, p. 81.

(*i*) Cf. *Commissioners of Taxes* v. *Melbourne Trust, Ltd.*, [1914] A. C. 1001; as to the life fund of a life insurance company, see *Last* v. *London Assurance Corpn.* (1884), 12 Q. B. D. 389; and as to the reserve fund of a mutual concern, see *Jones* v. *S. W. Lancs. Coal Owners' Assn.*, [1927] A. C. 827, *supra*, p. 82.

is distributed; and the company or other body are entitled to deduct the tax in paying the dividend (*k*). Yearly interest, annual payments and patent royalties are not to be set aside in ascertaining trade profits, but the payer may deduct tax in paying them (*l*).

There are also specific prohibitions against the deduction, in computing profits, of any loss not connected with or arising out of the trade or profession (*m*); in order to be deducted the loss must be in the nature of a commercial loss, and therefore damages for personal injuries due to the negligence of the traders' servants (*n*), and penalties for breaches of the customs laws (*o*) are not to be deducted, nor is a loss by defalcation (*p*), or by excessive drawings on the part of a director (*q*). Such payments are not necessarily incurred, nor do they form a necessary risk, in earning the profits; this exclusion illustrates the general rule that it is immaterial for what purpose the profits are expended, even if the expenditure is compulsory (*r*). On the other hand, a sum paid by a company to a director (whose presence is detrimental to the company's business) in order to avoid the publicity of an action for wrongful dismissal may be a proper deduction in arriving at profits, as having been expended wholly and exclusively for the purposes of the trade (*s*).

(*k*) General Rules, Rule 20, *infra*, p. 521; "body of persons" is defined in sect. 237, *infra*, p. 471. As regards mines, quarries and other concerns formerly chargeable under Sched. A, see No. III. r. 5, *infra*, p. 475. As to persons chargeable, see Chap. XI.

(*l*) General Rules 19, 21, *vide infra*, pp. 182 *sqq.*, 521, 522. Copyright royalties paid to a person whose usual place of abode is abroad are brought within Rule 21 by sect. 25 of the Act of 1927, *infra*, p. 589.

(*m*) Sched. D, Cases I. and II. r. 3 (e), *infra*, p. 500; sect. 209 (2), *infra*, p. 464.

(*n*) *Strong & Co.* v. *Woodifield*, [1906] A. C. 448, *supra*, p. 119; *infra*, p. 134.

(*o*) *I. R.* v. *Warnes*, [1919] 2 K. B. 444; *I. R.* v. *von Glehn*, [1920] 2 K. B. 553, *supra*, p. 119.

(*p*) *Curtis* v. *Oldfield, Ltd.* (1925), 41 T. L. R. 373.

(*q*) *Roebank Printing Co.* v. *I. R.*, [1928] S. C. 701; 13 Tax C. 864.

(*r*) As to relief in respect of commercial loss, *vide infra*, p. 170.

(*s*) *Mitchell* v. *B. W. Noble, Ltd.*, [1927] 1 K. B. 719, *infra*, p. 130.

Additions to Capital not included in Taxable Profits; Sale of Investments.

The Income Tax Acts charge income, not capital; and income is taxable "notwithstanding that on an adjustment of accounts part of the sums accruing as income ought to go to recoup capital" (*t*).

Controversy often arises as to whether the net proceeds of sales of investments in securities, landed property and so on are profits of a trade or accretions of capital. The test is, whether or not a trade is carried on in the buying and selling of the investments. Thus, a man who possesses a collection of pictures for his own enjoyment, and who sells one of them to meet his pecuniary necessities—or even because a tempting offer happens to be made to him—is not taxable for the proceeds of the sale (*t*); but a picture dealer who has bought to sell again is liable on his net profits.

"Where the owner of an ordinary investment chooses to realize it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit in the sense of Schedule D. . . . . But enhanced values obtained from realization or conversion of securities may be so assessable, where what is done is not merely a realization or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business. The simplest case is that of a person or association . . . . buying and selling lands or securities speculatively, in order to make gain, dealing in such investments as a business, and thereby seeking to make profits. There are many companies which in their very inception are formed for such a purpose, and in these cases it is not doubtful that, where they make a gain by a realization, the gain they make is liable to be assessed for income tax" (*x*).

(*t*) *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 424, per FARWELL, L.J., at p. 437.

(*x*) *Californian Copper Syndicate* v. *Harris* (1904), 6 F. 894; 5 Tax C. 159, per Lord Justice-Clerk MACDONALD at p. 165; approved in *Commissioners of Taxes* v. *Melbourne Trust, Ltd.*, [1914] A. C. 1001, at p. 1010, and *Ducker* v. *Rees Roturbo Syndicate, infra,* note (*g*), [1928] A. C. at p. 140.

In practice the line is often difficult to draw. The buying and selling of investments is a necessity of insurance business; and where an insurance company makes a gain by realizing an investment at a larger price than was paid for it, the difference is to be reckoned among its profits (*y*); conversely, any loss is to be deducted (*z*). An investment company (so named) which had power to vary its investments was taxable on the profits made by realizing securities, though these were not distributed as dividend but were credited to capital account, and although the capital account as a whole showed a loss in the year in question (*a*). On the other hand, though a temporary investment in foreign currency is made for the purpose of carrying out a contract for the supply of goods, if it is afterwards sold at an enhanced price, the excess realized is not necessarily a trade profit (*b*). A company formed to acquire the assets of a bank from the liquidators, so as to enable the liquidation to be finally closed, is taxable if it makes a profit on the realization of those assets (*c*); but the sale of a partnership business to a limited company formed by the partners is not a transaction which gives rise to a taxable profit (*d*). A mining syndicate formed in order to acquire copper-bearing land, to develop it to some extent and then to sell it (but not to work it), in carrying out those transactions is carrying on a trade and is taxable on the profit made (*e*). So a company, one part of whose usual business was to act as selling agent for colliery owners and to purchase wagons for them (*f*), was

(*y*) *Scottish Union, &c.* v. *Smiles; Northern Assurance Co.* v. *Russell* (1889), 16 R. 461; 2 Tax C. 551, *supra*, p. 87; *infra*, p. 138. Cf. also *National Provident Institution* v. *Brown, infra*, p. 207.

(*z*) *Royal Insurance Co., Ltd.* v. *Stephen* (1928), 44 T. L. R. 630; *infra*, p. 140.

(*a*) *Scottish Investment Trust Co.* v. *Forbes* (1893), 21 R. 262; 3 Tax C. 231.

(*b*) *McKinlay* v. *Jenkins, Ltd.* (1926), 10 Tax C. 372.

(*c*) *Assets Co., Ltd.* v. *Forbes* (1897), 24 R. 578; 3 Tax C. 542, see p. 80, note (*o*); cf. *Commissioners of Taxes* v. *Melbourne Trust, Ltd., supra.* Such a profit can be said to be earned at the time when it is distributed to the shareholders, *ibid.*, [1914] A. C. at p. 1011.

(*d*) *Doughty* v. *Commissioner of Taxes*, [1927] A. C. 327, *infra*, p. 127.

(*e*) *Californian, &c.* v. *Harris, supra*, note (*x*); cf. *I. R.* v. *Korean Syndicate*, [1921] 3 K. B. 258.

(*f*) *T. Beynon, Ltd.* v. *Ogg* (1918), 7 Tax C. 125; cf. *Gloucester Carriage and Wagon Co., Ltd.* v. *I. R.*, [1925] A. C. 469.

held to be taxable on the profit of an occasional sale of wagons purchased on its own account. And a company formed in order (among other objects) to buy patents and to make a profit by selling them is liable, if it sells them, to tax on the excess of the selling price over the purchase price (*g*). A lump sum awarded for the use of a patent by the Crown may be subject to tax (*h*), as may the amount received for the sale of a right to use patent machines and processes in the purchaser's mills (*i*).

On the other hand, where the original intention of forming the syndicate was not to buy the land (in that case a rubber estate) in order to sell again, but to work the land; but afterwards, on additional land being acquired, the capital was found to be too small to work the whole, and the land was then sold, the syndicate was held not to be taxable on the profits made by the sale (*k*). In both this and the *Californian* case, the sale of the lands was one of the objects specified in the memorandum of association.

So also where, for the purpose of developing and realizing lands held by various trustees and other persons, it was found convenient to form a company rather than that they should act individually, the company's receipts were held not to be income or the profits of a trade (*l*). Premiums received by brewers or wine merchants for leases of tied houses are capital receipts (*m*).

A chartered company "can do anything it is not prohibited from doing," and the specific objects for which it is formed cannot so readily be ascertained as in the case of a limited company; but a chartered company which has received lands in exchange for the surrender of its territorial

(*g*) *Ducker* v. *Rees Roturbo Syndicate,* [1928] A. C. 132. In *Collins* v. *Firth-Brearley Stainless Steel, &c. Ltd.* (1925), 9 Tax C. 520, the company was found not to be formed for such an object, and the sale of its patent rights was held to be the transmutation of a capital asset.

(*h*) *Constantinesco* v. *The King* (1927), 43 T. L. R. 727; *Mills* v. *Jones* (1928), 45 T. L. R. 31.

(*i*) *Brandwood* v. *Banker* (1928), 7 A. T. C. 200.

(*k*) *Tebrau (Johore) Rubber Syndicate, Ltd.* v. *Farmer* (1910), 5 Tax C. 658.

(*l*) *Rand* v. *Alberni Land Co., Ltd.* (1920), 7 Tax C. 629.

(*m*) *Collyer* v. *Hoare & Co., Ltd.* (1928), 7 A. T. C. 532.

rights is not taxable on the profits of the sale of such lands although they may be applied in payment of dividends (*n*). It is otherwise if a chartered company sells lands with a view to profit, as part of a general scheme for the development of its territory (*o*).

The British Government expropriated a railway in the territory of the former South African Republic, and paid to the company arrears of interest guaranteed by the Republic; the amount paid was held to be gross receipts of the company's trade, and not to form part of the purchase price of its assets; the company was therefore taxable on that sum, subject to a deduction of trade expenses (*p*).

A lump sum paid voluntarily by a company in liquidation to a firm of ship managers as compensation for loss of their employment as managers to the company is not assessable as a profit of the firm's trade (*q*).

Money received from an insurance company in respect of the destruction of stock-in-trade by fire is a trading receipt; and although that receipt exceeds the value appearing in the trader's books, the excess does not represent a capital accretion (*r*).

Bonus Shares: Investment Companies.

The question whether a particular gain is capital or income arises in connection with distributions of bonus shares. The decisions on this matter have mainly been concerned with the "total income" of an individual recipient, and are considered in Chapter XIII.; and, briefly, the principle laid down is that where by the act of the distributing company the distribution is made in the form of capital of that company, and there is no effective option to the shareholder to take cash, the shares or stocks received by him form

(*n*) *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 425, *supra*, p. 122; see also *Hudson's Bay Co.* v. *Thew*, [1919] 2 K. B. 632, *infra*, p. 226, note (*x*).

(*o*) *Thew* v. *South-West Africa Co.* (1924), 131 L. T. 248.

(*p*) *Pretoria-Pietersburg Rail. Co.* v. *Elwood* (1908), 6 Tax C. 508, *vide infra*, p. 179.

(*q*) *Chibbett* v. *Robinson* (1924), 9 Tax C. 48; cf. *Cowan* v. *Seymour*, and other cases, *infra*, p. 249.

(*r*) *J. Gliksten, Ltd.* v. *Green*, [1929] A. C. 381.

an accretion to his capital (*s*). But if the distribution of shares constitutes a release of assets as income, that principle does not apply; and where the shares distributed are not shares in the distributing company, but shares in another company held by the distributing company as part of its investments, the shares so distributed are not an accretion of capital, but form a dividend paid in money's worth, and represent taxable income (*t*). In that case the recipient of the shares distributed was an investment company and the proceeds of their sale formed part of the company's trade profits.

Again, the market value of debentures received in satisfaction of unpaid interest on mortgage bonds has been treated as forming part of such trade profits (*u*).

Capital and Current Expenditure.

As accretions of capital are not to be included in gross receipts (*x*), so expenditure for capital purposes must not be deducted from those receipts in order to ascertain net profits (*y*). Although expenditure may have been incurred wholly and exclusively for the purposes of the trade, it is yet not deductible when it is "made, not only once for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, ... there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable, not to revenue, but to

(*s*) *I. R.* v. *Blott*, [1921] 2 A. C. 171, and the cases cited therewith, *infra*, p. 314.

(*t*) *Pool* v. *Guardian Investment Co., Ltd.*, [1922] 1 K. B. 347; approved (and distinguished) in *I. R.* v. *Fisher's Exors.*, [1926] A. C. 395, *infra*, p. 315, per Lord CAVE, L.C., at p. 402, per Lord SUMNER at p. 409.

(*u*) *Scottish and Canadian, &c. Investment Co., Ltd.* v. *Easson*, [1922] S. C. 242; 8 Tax C. 265.

(*x*) *Supra*, p. 122.

(*y*) *Coltness Iron Co.* v. *Black*, and the other cases cited below. The prohibitions in Sched. D, Cases I. and II. r. 3 (f), (g), *infra*, p. 500, do not cover the whole ground.

(*z*) *British Insulated, &c. Cables* v. *Atherton*, [1926] A. C. 205, per Lord CAVE, L.C., at p. 213. This passage, in which Lord CAVE amplified the rule previously laid down in *Vallambrosa Rubber Co.* v. *Farmer*, [1910] S. C. 519, *infra*, p. 130, is now accepted as furnishing the test of this matter; see, *e.g.*, *Mitchell* v. *B. W. Noble, Ltd.*, *infra*, p. 130.

capital" (*z*). On the other hand, money borrowed in a "fluctuating temporary manner" for the purpose of more effectually carrying on the business operations is not "capital" in the sense in which the word is used in the Companies Acts; the word bears no different meaning in the Income Tax Acts when applied to the proceedings of companies (*a*), nor indeed, it might be added, to those of individuals or partnerships (*b*). Mere bookkeeping is not conclusive (*c*). Specific provisions are made for allowances in respect of depreciation and obsolescence of machinery and plant (not of buildings, &c.) (*d*); but these make no difference to the principle above stated.

There is no allowance for wastage of capital (*e*); and, in arriving at the profits of a coal-mine, there can be no deduction in respect of any proportion of the capital expended on making bores or sinking pits (*e*); for profits in this connection mean "the entire profit derived from the mine, deducting the cost of working it, but not the cost of making it." It is possible, however, that in, *e.g.*, a tin mine, the sinking of shafts may be a matter of such frequent recurrence that its cost is part of ordinary working expenditure (*f*). There is, of course, no allowance for the value of coal exhausted (*g*); nor can any deduction be made to represent the annual exhaustion of natural deposits from which nitrates and iodine are manufactured (*h*). The sale of grave-spaces in perpetuity does not give a cemetery com-

(*a*) *Farmer* v. *Scottish North American Trust*, [1912] A. C. 118; see per Lord ATKINSON at p. 127, *vide infra*, p. 135; *Reid's Brewery* v. *Male*, [1891] 2 Q. B. 1, *infra*, p. 133. See also the other cases cited in connection with the deduction of interest, *infra*, pp. 134—136.

(*b*) *Anglo-Continental Guano Works* v. *Bell*, *infra*, p. 135, note (*r*), was a somewhat special case in which the money borrowed was capital; but the distinction does not turn upon the difference between a company and a partnership.

(*c*) *J. & M. Craig (Kilmarnock), Ltd.* v. *I. R.*, [1914] S. C. 338, *infra*, p. 130; *Doughty* v. *Commissioner of Taxes*, [1927] A. C. 327.

(*d*) *Infra*, p. 148.

(*e*) *Coltness Iron Co.* v. *Black* (1881), 6 A. C. 315; see per Lord PENZANCE at p. 326.

(*f*) *Ibid.* at pp. 324, 339; *Morant* v. *Wheal Grenville Mining Co.* (1894), 3 Tax C. 298; but such was not the case in *Bonner* v. *Basset Mines, Ltd.* (1912), 6 Tax C. 146.

(*g*) *I. R.* v. *Farie* (1878), 6 R. 270.

(*h*) *Alianza Co., Ltd.* v. *Bell*, [1905] 1 K. B. 184; [1906] A. C. 18; cf. *Kauri Timber Co.* v. *Commr. of Taxes (New Zealand)*, [1913] A. C. 771.

pany any right to deduct sums set aside to replace capital thus exhausted (*i*). A sum retained by the lessees of a coal mine instead of paying royalties, in order to recoup themselves for losses incurred by paying a dead rent before the minerals were being worked, is not deductible (*k*); nor is a payment made for the surrender of a mining lease which has been found unprofitable (*l*), or for a dumping-ground (*m*), or for damage done to surface land by dumping, subsidence and so forth (*n*). The expenses of promoting a Bill in Parliament for a mineral railway are not deductible (*o*).

The cost incurred in bringing a branch line of railway to the standard of a main line is not deductible, nor is the extra cost of replacing iron rails and chairs by steel rails and heavier chairs (*p*).

A sinking fund set apart to repay a mortgage debt is not deductible, though the proceeding is made obligatory by Act of Parliament (*q*); neither is a reserve fund set apart for replacement of buildings or plant deductible (*r*), nor a premium paid for a leasehold interest in the business premises (*s*).

Again, there is no deduction for expense due to the removal of machinery to smaller or larger premises (*t*).

(*i*) *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1889), 17 R. 154; 2 Tax C. 516; see per Lord McLaren at p. 532.

(*k*) *Broughton Coal Co.* v. *Kirkpatrick* (1884), 14 Q. B. D. 491; there is no deduction in the income assessed for rent or royalties, *vide infra*, p. 154.

(*l*) *Mallett* v. *Staveley Coal and Iron Co.*, [1928] 2 K. B. 405.

(*m*) *I. R.* v. *Adam*, [1928] S. C. 738.

(*n*) *Addie's Collieries, Ltd.* v. *I. R.*, [1924] S. C. 231; 8 Tax C. 671.

(*o*) *Moore* v. *Hare*, [1915] S. C. 91; 6 Tax C. 572.

(*p*) *Highland Rail. Co.* v. *Special Commrs.* (1889), 16 R. 950; 2 Tax C. 485. But as to current renewals and depreciation, see p. 159, *infra*.

(*q*) *City of Dublin Steam Packet Co.* v. *O'Brien* (1912), 6 Tax C. 101, *supra*, p. 120; money devoted to the repayment of a debt was allowed to be deducted in *Hall* v. *King's Lynn Mooring Commrs.* (1875), 1 Tax C. 23, but this decision appears no longer to be good law.

(*r*) *Forder* v. *Handyside* (1876), 1 Ex. D. 233; *Coltness Iron Co.* v. *Black*, *supra*, notes (*e*), (*f*).

(*s*) *Gillatt & Watts* v. *Colquhoun* (1884), 2 Tax C. 76; *McTaggart* v. *Strump*, [1925] S. C. 599; (1925), S. L. T. 487; the annual value of the premises, of course, forms a legitimate deduction, *vide infra*, p. 143. See also "Brewers' Profits," *infra*, p. 132.

(*t*) *Smith* v. *Westinghouse Brake Co.* (1888), 2 Tax C. 357; *Granite Supply Association* v. *Kitton* (1905), 8 F. 55; 5 Tax C. 168.

"Multiple" shopkeepers cannot deduct their expenditure on fixtures and fittings for a new shop (*u*), or on surrendering the lease of a shop which has been abandoned (*x*). The value of a lost ship is a capital loss, and cannot be deducted; the fact that the owners do not insure their ships, but reserve annual sums to form an "insurance fund" of their own, does not entitle them to deduct even those sums (*y*). A steamship company cannot deduct a sum paid by them to shipbuilders for cancelling an agreement to build them a ship (*z*); nor the expenditure incurred on putting into a proper state of repair a ship newly acquired (*a*) or restored to its owners after seizure (*b*). Expenditure on dredging a channel to a shipbuilding works and constructing a deep-water berth (*c*), and on converting works for the manufacture of high explosives (*d*), is capital expenditure; though in either case the trader's main incentive for incurring the expenditure was their possession of a particular contract with the Government. A sum set aside by a company in order that the income may be used for the relief of their invalid employees, and a lump sum placed in the hands of trustees by a company to form the nucleus of a contributory pensions fund for its employees, are capital sums and are not deductible as trade expenses (*e*).

On the other hand, the necessary expenses of cultivating and managing a rubber estate incurred in the year in which profits are earned are deductible, and it is no answer to the claim for deduction that a part of those expenses produced no return in that year because the whole of the rubber-trees were not in full bearing; that fact does not make the

(*u*) *Eastmans, Ltd.* v. *Shaw* (1928), 45 T. L. R. 12. Cf. *Hyam* v. *I. R.*, [1929] S. C. 384. (*x*) *Cowcher* v. *R. Mills & Co., Ltd.* (1927), 13 Tax C. 216.

(*y*) *I. R.* v. *Western S.S. Co.*, [1907] S. C. 1005.

(*z*) *Countess Warwick S.S. Co.* v. *Ogg*, [1924] 2 K. B. 292.

(*a*) *Law Shipping Co.* v. *I. R.*, [1924] S. C. 74.

(*b*) *I. R.* v. *Granite City S.S. Co.*, [1927] S. C. 705; 13 Tax C. 1.

(*c*) *Ounsworth* v. *Vickers*, [1915] 3 K. B. 267; cf. *Dumbarton Harbour Board* v. *Cox* (1918), 7 Tax C. 147, *infra*, p. 149.

(*d*) *Lothian Chemical Co., Ltd.* v. *Rogers* (1926), 11 Tax C. 508.

(*e*) *Rowntree, Ltd.* v. *Curtis*, [1925] 1 K. B. 328; *British Insulated, &c. Cables, Ltd.* v. *Atherton*, [1926] A. C. 205, *supra*, p. 126.

expenses of superintendence, weeding, &c. a capital expenditure; but the expenses of clearing and draining the estate and of making roads are capital expenditure. This decision affords a valuable illustration of the test above stated (*f*).

Under a hire-purchase agreement for wagons, the hirers may at the end of the stipulated period pay a further nominal sum to acquire the property in the wagons; the whole of the sum payable annually under the agreement is not a capital payment, but that part only which represents payment for hire during the year is deductible in ascertaining profits, while that part which represents payments for the option to purchase is not (*g*).

The amount of a payment may be calculated with a view to recouping the capital of the recipient, and the sum when paid may form part of his capital; but it may yet be a revenue payment as far as the trader who pays it is concerned (*h*). Thus, a payment made to a director whose services are dispensed with (*h*), or a payment for a retiring annuity (*i*), is not necessarily capital expenditure, though paid in a lump sum.

Cost of Acquiring or Financing a Business or of Obtaining Business.

Money spent in acquiring a business is no more to be deducted than any other kind of capital expenditure (*k*); if a firm of contractors is converted into a company, the company cannot deduct from the profits made out of the contracts acquired from the firm the price paid for acquiring them (*l*). A payment made by a bank for the business of

(*f*) *Vallambrosa Rubber Co., Ltd.* v. *Farmer,* [1910] S. C. 519; 5 Tax C. 529; see note (*z*), *supra;* and cf. *Merlimau Rubber Estates, Ltd.* v. *Inland Revenue,* [1923] A. C. 283.

(*g*) *Darngavil Coal Co., Ltd.* v. *Francis,* [1913] S. C. 602; 7 Tax C. 1.

(*h*) *Mitchell* v. *B. W. Noble, Ltd.,* [1927] 1 K. B. 719, *supra,* p. 121; and see note (*k*), below.

(*i*) *Infra,* p. 141.

(*k*) *Royal Insurance Co.* v. *Watson,* [1897] A. C. 1, *infra,* p. 142; the payment made to the former manager was held to form part of the purchase price of the business, and was on this ground only disallowed as a deduction. Cf. *Ward* v. *Commrs. of Taxes,* [1923] A. C. 145, *infra,* p. 133.

(*l*) *City of London Contract Corpn.* v. *Styles* (1887), 2 Tax C. 239; cf. *Smith* v. *Moore,* [1921] 2 A. C. 13. See *J. & M. Craig (Kilmarnock), Ltd.* v. *I. R.; Alianza Co., Ltd.* v. *Bell; Doughty* v. *Commissioner of Taxes, supra,* p. 127.

another bank, including a concession by a foreign Government of the right of issuing notes and so on, is capital expenditure, and would have been so even if the payment had been made solely for the power to issue notes (*m*). The purchase price of a business or of business rights is usually paid in a lump sum; but it is not the less capital expenditure if it is paid in a series of annual payments (*n*).

If the owner of a business sells it to a company and becomes a shareholder in the company as well as managing director, the company cannot treat the dividend on his shares as being a part of his remuneration as a director, so as to deduct that dividend in computing its profits (*o*).

Upon the same principle, it is not permissible to deduct sums advanced by a principal to a subsidiary company for the purpose of enabling the latter generally to supply the principal company with raw material (*p*) or to carry on a buying agency for the principal company (*q*). A loss made on the sale of shares in companies, purchased in order to secure contracts from those companies, is not deductible as a trade expense (*r*). But if a trader subscribes to the guarantee fund of an exhibition in the hope of obtaining contracts for the equipping of the exhibition, he may deduct any sum which he has had to pay in fulfilment of the guarantee (*s*). A firm of law agents which acts as such for the promoters of a company, and for the company when

(*m*) *London Bank of Mexico* v. *Apthorpe*, [1891] 1 Q. B. 383; the decision was affirmed in C. A., [1891] 2 Q. B. 378, and the appeal on this point was abandoned, see 3 Tax C. 146.

(*n*) See *Delage* v. *Nugget Polish Co., Ltd.* (1905), 21 T. L. R. 454, *infra*, p. 192. An annual payment of a very similar kind was, however, found as a fact not to be a capital payment in *Moore* v. *Stewarts, Ltd.* (1906), 8 F. 1129; 6 Tax C. 501. The payer's right to deduct income tax on such payments is discussed *infra*, pp. 191 *sqq*.

(*o*) *Eyres* v. *Finnieston Engineering Co.* (1916), 7 Tax C. 74.

(*p*) An advance made in a specific transaction for delivery of goods would have been a different matter: *English Crown Spelter Co., Ltd.* v. *Baker* (1908), 5 Tax C. 327; cf. *Anglo-Continental Guano Works* v. *Bell* (1894), 3 Tax C. 239, *supra*, p. 127. See also *Baker* v. *Mabie, Todd & Co., Ltd.* (1927), 13 Tax C. 235.

(*q*) *Jacobs, Young & Co., Ltd.* v. *Harris* (1926), 11 Tax C. 221.

(*r*) *Stott* v. *Hoddinott* (1916), 7 Tax C. 85; *Jacobs Young* v. *Harris, supra*.

(*s*) *Morley* v. *Lawford* (1928), 45 T. L. R. 30.

incorporated, cannot deduct loans made to the company and found to be irrecoverable (*t*).

A limited company cannot deduct the expenses of an application for reduction of capital (*u*).

Brewers' Profits.

The principles stated in the preceding pages as to the allowance of "proper debit items" (*x*), and as to the distinction between capital and income in receipts and in expenditure (*y*), are exemplified in a series of cases decided with regard to the computation of the profits of trade carried on by brewing companies; it may be convenient to deal with this series as a whole.

At one time it was thought that the business of holding and letting "tied" houses was not an integral part of the trade of a brewing company, and that any money expended in so doing was an investment of capital,—no regard being had to what the real nature of the expenditure in or about the tied house would be if the house were not held or owned by a brewing company,—or at any rate that the expenditure was an expense incurred in a separate trade; in other words, that in ascertaining the profits of such a company's trade the cost of production of beer might indeed be deducted, but not any expense of promoting or increasing its sale (*z*). But it is now established that the holding of tied houses may be a necessary incident in a brewing business, and that expenses incurred by the brewer in connection with such a house may be a necessary outlay for the purposes of his own trade, and none the less so because they enure also to the benefit of the tenant of the house (*a*).

(*t*) *Hagart and Burn-Murdoch* v. *I. R.*, [1929] A. C. 386.

(*u*) *Archibald Thomson, Ltd.* v. *I. R.*, [1919] S. C. 289; 7 Tax C. 158.

(*x*) *Supra*, pp. 117—119.

(*y*) *Supra*, pp. 122, 126.

(*z*) *Watney* v. *Musgrave* (1880), 5 Ex. D. 241; *Brickwood* v. *Reynolds*, [1898] 1 Q. B. 95. In the former case, KELLY, C.B., went so far as to refer to a deduction for cost of advertisement as inadmissible.

(*a*) *Smith* v. *Lion Brewery Co., Ltd.*, [1911] A. C. 150; *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] A. C. 433, *supra*, p. 117, overruling *Brickwood* v. *Reynolds*, *supra*.

Upon this view it has been decided that the following deductions are admissible in ascertaining the profits of brewers: the share of the compensation levy deducted by the tenant of the tied house against the brewing company who were his landlords (*b*); the difference between the rents of leasehold houses or the Schedule A assessments of freehold houses on the one hand, and the rents received from the tied tenants on the other hand (*c*); expenses of repair of these houses actually paid by the brewers; rates and taxes paid by them in place of the tenant; premiums of insurance against fire and against loss of licence; and legal expenses in connection with renewals of licences, surrenders and assignments of leases, and so on (*d*).

The same principle had been applied many years previously by allowing a deduction for losses on loans advanced by brewers to persons who dealt or had agreed to deal with them; it does not appear whether the borrowers were "tied" or "free" or both; but it was found that the making of the loans and advances was essential to the realizing of the brewers' profits (*e*).

The earlier decision that a brewing company may not deduct in each year a portion of a premium paid for the lease of a tied house may still be supported on the ground that such a premium is a capital payment (*f*). Conversely, premiums received by brewers (or wine merchants) from

(*b*) *Smith* v. *Lion Brewery Co., Ltd., supra;* as to compensation levy, see p. 58, notes (*s*), (*t*).

(*c*) The rent charged to a tied tenant is, of course, less than the annual value of the house, by reason of the burden imposed on the tenant by the covenant "tying" him to buy his liquors from the landlord. As to deduction for annual value of premises occupied for the purpose of the business, *vide infra,* p. 143; and cf. *Gillatt and Watts* v. *Colquhoun, supra,* p. 128.

(*d*) *Usher's Wiltshire Brewery* v. *Bruce, supra.* As to fire insurance premiums, contrast *Union Cold Storage Co., Ltd.* v. *Jones* (1924), 8 Tax C. 725, *supra,* p. 119. The expenses of a campaign against prohibition have been held not to be deductible under the New Zealand Income Tax Act: *Ward & Co., Ltd.* v. *Commrs. of Taxes,* [1923] A. C. 145.

(*e*) *Reid's Brewery Co., Ltd.* v. *Male,* [1891] 2 Q. B. 1, *supra,* p. 127; as to bad debts, cf. *Gleaner Co., Ltd.* v. *Assessment Committee (Jamaica),* [1922] 2 A. C. 169.

(*f*) *Watney* v. *Musgrave* (1880), 5 Ex. D. 241; but the ground upon which this case was actually decided is stated *supra,* p. 132. Cf. *Gillatt and Watts* v. *Colquhoun, supra,* p. 128.

tenants of tied and free houses of which the companies are owners or tenants are capital receipts, and do not form part of the brewers' profits (*g*). Again, payments made for the right to call for the surrender of an existing licence, if the licensing justices shall require it as a preliminary to the grant of a new licence, and other expenses of appying for new licences, were held to be investments of capital (*h*); but it is submitted that some part of them at any rate was of a recurring nature, and that the principle of the *Usher's Wiltshire Brewery* case makes any such part a proper deduction, even though the endeavour to increase the sale of beer by obtaining a licence in respect of a tied house happens to be unsuccessful in a particular case.

A payment of damages to a guest at an inn for injuries incurred by the fall of a chimney owing to the negligence of the company's servants was disallowed as a deduction, because such damages were not incidental to the trade in the inn (*i*).

Interest and Annuities.

If any annual interest or any annuity or other annual payment is a necessary expense incurred in earning the profits, it must be deducted in ascertaining the amount of those profits, and cannot be described as payable out of them (*k*). The specific prohibition (*l*) against the deduction of annual interest, annuities, &c. applies only where these are payable out of "the profits or gains" and is probably superfluous, because this expression means profits ascertained by an ordinary trading account (*m*), irrespective of the destina-

(*g*) This was conceded in *Collyer* v. *Hoare & Co., Ltd.* (1928), 7 A. T. C. 532, *supra*, p. 124. But the C. A. remitted the case to the Commissioners on the point whether the premiums or any part of them should be treated as reducing the debits allowable under the decision in *Usher's Wiltshire Brewery* v. *Bruce*, *supra*, notes (*a*), (*d*). See also "Annual Value of Business Premises," *infra*, p. 143.

(*h*) *Southwell* v. *Savill Bros., Ltd.*, [1901] 2 K. B. 349.

(*i*) *Strong & Co., Ltd.* v. *Woodifield*, [1906] A. C. 448, *supra*, p. 119. No question arose here as to whether the trade of the inn was that of the brewing company, for the inn was not let, but was managed by their servant.

(*k*) *Gresham Life Assurance Co.* v. *Styles*, [1892] A. C. 309, *infra*, p. 135.

(*l*) Sched. D, Cases I. and II. r. 3 (1). As to the right of the payer to deduct and retain tax, *vide infra*, p. 182.

(*m*) *Supra*, p. 117.

tion of the profits when made (*n*). It has also been sought to treat the prohibition against deductions in respect of capital as prohibiting a deduction of interest on capital (*o*).

In spite, then, of the presence of these prohibitory rules, if a company trades in annuities, selling them in consideration of a price received for them, those annuities are in the same position as regards income tax as coal or corn sold, and the cost to the seller of the annuities (that is, the money annually paid to the holders) must be deducted from the gross receipts earned by selling them just as the cost price of the coal or corn is deducted. "The Legislature intended all traders, whether in groceries, annuities, or other articles of commerce, to be assessed upon the same footing" (*p*). Upon the same principle, an investment company which borrows from its bankers for the purpose of its daily operations an overdraft that may fluctuate in amount from day to day is entitled to deduct the interest payable on that overdraft, because the daily borrowing and lending of money is a part of the company's trade (*q*). But if such borrowing is due to the exigencies of one partner, and not to the necessities of the business, the interest on the short loans cannot be deducted (*r*).

On the other hand, interest on such a permanent security as debenture bonds (*s*) or a mortgage of rates (*t*) is not deductible; nor can a payment for capital so borrowed be

(*n*) *Supra*, pp. 120, 121.

(*o*) Rule 3 (f) (g), *infra*, p. 500; in *Farmer* v. *Scottish North American Trust, Ltd.*, [1912] A. C. 118, at p. 129, the H. L. refrained from deciding whether the third rule in Sched. D of the Act of 1842, now replaced by Rule 3 (f), has this effect or not. As to capital expenditure, *vide supra*, p. 126.

(*p*) *Gresham Life, &c.* v. *Styles*, [1892] A. C. 309, per Lord WATSON at p. 318.

(*q*) *Farmer* v. *Scottish North American Trust, Ltd., supra; Reid's Brewery Co.* v. *Male, supra*, p. 133; an earlier decision to the contrary effect, that short term interest paid to depositors could not be deducted (*Mersey Loan, &c. Co.* v. *Wootton* (1887), 2 Tax C. 316), was overruled by *Gresham Life, &c.* v. *Styles, supra*. Cf. also *Goslings & Sharpe* v. *Blake, infra*, p. 184. As to shares, &c. held by investment companies, see p. 125, *supra*.

(*r*) The decision in *Anglo-Continental Guano Works* v. *Bell* (1894), 3 Tax C. 239, as explained in *Farmer* v. *Scottish, &c. Trust, supra*, goes no further than is stated in the text.

(*s*) *Alexandria Water Co.* v. *Musgrave* (1883), 11 Q. B. D. 174.

(*t*) *Portobello T. C.* v. *Sulley* (1890), 27 S. L. R. 863; 2 Tax C. 647, *supra*, p. 86.

deducted because it takes the shape of a bonus at the time of repayment instead of that of interest (*u*); brokers' charges and other expenses of raising debentures are not deductible (*x*). It has been decided that interest paid by contractors, during the construction of works, to the shareholders of companies by whose order the works were constructed was not deductible in ascertaining the profits of the contractors (*y*); but it is submitted that in certain circumstances such payments might be an expense necessary to the earning of the contractors' profits.

The right possessed by a company dealing in annuities to deduct annuities in ascertaining its profits, does not enable it to retain for its own use the income tax deducted by it in paying those annuities; and it has been held (though it may be doubted whether the decision follows necessarily from that proposition) where the company's dividends on investments were taxed at the source, that it could not deduct the whole of those dividends in rendering an account of its profits, but must write back the amount of the annuities paid (*z*). In effect the annuities were treated as being paid out of the dividends alone; and to that extent the decision appears to run counter to that of the House of Lords in *Gresham Life Assurance Society* v. *Styles* (*a*).

Payments for User of Patents.

There is an express prohibition against deducting any royalty or other sum paid in respect of the user of a patent in ascertaining the profits of the trader who makes the payment (*b*). Before the passing of the Act of 1918, it was

(*u*) *Arizona Copper Co.* v. *Smiles* (1891), 19 R. 150; 3 Tax C. 149.

(*x*) *Texas Land and Mortgage Co.* v. *Holtham* (1894), 3 Tax C. 255.

(*y*) *City of London Contract Corpn.* v. *Styles* (1887), 2 Tax C. 239; both BOWEN and FRY, L.JJ., declined to discuss the point as it had not been raised below; and the facts are not fully stated in the report. *Vide supra*, p. 130.

(*z*) *Hancock* v. *General Reversionary, &c. Co.*, [1919] 1 K. B. 25; it may be that the company should have paid the annuities in full without deducting tax, *vide infra*, pp. 186—188.

(*a*) *Vide infra*, p. 199, note (*h*).

(*b*) Sched. D, Cases I. and II. r. 3 (m), *infra*, p. 500. The question whether such a payment is capital or income—see *Jones* v. *I. R.*, [1920] 1 K. B. 711, and the more recent cases cited therewith, *infra*, p. 206—does not, therefore, arise in this connection.

held that this rule did not apply in any case where the payer could not deduct and retain tax against the person owning the patent (*c*); but as the prohibition against deduction of royalty is now separated from that enabling the payer to deduct and retain the tax (*d*), that decision seems no longer to be applicable.

Life Assurance Profits.

In computation under Case I. (*e*), the profits of a life assurance business (including that of granting annuities) are ascertained separately from those of any other class of assurance business carried on by the company (*f*); but if it makes a loss on its life assurance business it may set that loss off against the profit on its other classes of business, in the same way as any other person or company carrying on more than one business (*g*). In ascertaining, however, whether it has made such a loss, the income derived from the investments of its life assurance fund is to be treated as profits of the life assurance business (*h*).

The reason for this separate treatment of life insurance business, and the usually accepted method of computing its profits (*i*), will be found in the following passage:—

"... Life policies are contracts of most variable endurance, and the premiums are in many cases not annual payments. The contracts may endure for the policy-holder's life or for a certain number of years stated, or till the holder attains a certain age; and the company may be bound on the expiry of a fixed number of years, or on the attainment of a certain age by the policy-holder, either to

(*c*) *Lanston Monotype Corporation* v. *Anderson,* [1911] 2 K. B. 1019 (Act of 1907 (7 Edw. 7, c. 13), s. 25 (1)); but this decision was not followed in *Boyd* v. *Havelock,* [1918] S. C. 727; 7 Tax C. 321.

(*d*) See General Rule 19 (2), *infra,* p. 521. And as to deduction where the payment is not wholly made out of profits, see Rule 21 as amended, *infra,* p. 522.

(*e*) As to the option to charge under other cases, *vide supra,* p. 111.

(*f*) Sched. D, Cases I. and II. r. 15 (1), *infra,* p. 505.

(*g*) *Vide infra,* p. 170.

(*h*) Rule 15 (2), *infra,* p. 506. As to profits on investments, see the cases cited on p. 123; and as to loss, see *Royal Insurance Co., Ltd.* v. *Stephen, infra,* p. 140.

(*i*) Apart from any question of interest on investments, *supra,* p. 112.

pay a lump sum or an annuity for the remainder of the policy-holder's life. The premiums paid for such insurance may be paid all in one sum or by instalments within a fixed number of years, or annually during the holder's life, or during the subsistence of his policy. The premiums, therefore, do in no sense represent the annual profits and gains of the company. In like manner the amount of claims in one year arising on the death of persons insured, or as a deduction from the company's receipts for the year, cannot afford any criterion for the ascertainment of profits. A recently established company will receive a large amount of premiums and have few or no claims to meet. The profits and gains can be ascertained only by actuarial calculations, and this actuarial calculation may be obtained by taking the result of the quinquennial investigation prescribed by statute (*z*), or the periodical investigation in use in companies established before the statute, or by an investigation covering the three years prescribed by Schedule D of the Income Tax Acts" (*a*).

Industrial life assurance business is treated as a separate business from ordinary life assurance business, though carried on by the same company (*b*).

So far as a company carries on a mutual insurance business it earns no profits, though there may be a surplus returnable to the participating policy-holders who are the owners of that business (*c*), or though the surplus is carried to a reserve fund in which the members have an interest (*cc*). If a business is also done with outsiders, such surplus is not part of the assessable profits of that business (*c*). But if there are shareholders and the participating policy-holders

(*z*) See now Assurance Companies Act, 1909 (9 Edw. 7, c. 49), s. 5.

(*a*) *Scottish Union, &c.* v. *Smiles; Northern Assurance Co.* v. *Russell* (1889), 2 Tax C. 551, *supra*, p. 123; per INGLIS, L.P., at pp. 577—8; approved by Lord SHAW in *Liverpool and Globe, &c.* v. *Bennett*, [1913] A. C. p. 617. Rule 15 (1) first appeared as sect. 11 of the Finance Act, 1915, but its enactment does not affect the above decisions for the purpose for which they are here cited. See also *Last* v. *London Assurance, &c.* (1884), 12 Q. B. D., per DAY, J., at p. 401.

(*b*) Finance Act, 1923, s. 16 (3), *infra*, p. 561.

(*c*) *New York Life, &c.* v. *Styles* (1889), 14 A. C. 381, *supra*, p. 81.

(*cc*) *Jones* v. *S.-W. Lancs. Coal Assn.*, [1927] A. C. 823, *supra*, p. 82.

are not the owners of the business, bonuses returnable to these policy-holders in accordance with the terms of their policy form part of the profits and are not deductible as expenses (*d*), even though the capital of the shareholders who own the business is trivial in comparison with the volume of trade and their dividend is limited (*e*).

Such part of the profits as belongs to policy-holders or annuitants, or is allocated to them, or reserved for them, or expended on their behalf, is excluded in computing the profits of life assurance business under Case I. until any of the profits so excluded cease to be reserved (without being so allocated or expended), when they will be brought in as profits for the year then current (*f*).

Fire Insurance Profits.

Fire insurance policies are mostly contracts for one year only, but some policies of this kind cover risks for five to seven years. To take for each year the sum total of the premiums received and that of the losses paid and subtract the one from the other, without regard to the facts that the premiums cover risks running on into subsequent years and that the losses include losses arising out of policies issued in previous years is not an accurate or scientific method, but may be a useful working rule. Where this rule was not shown to have produced an inequitable result, the Courts refused to say that it should not have been applied, and to allow an arbitrary deduction (of $33\frac{1}{3}$ per cent.) from one year's profits for risks of the succeeding year in respect of annual policies which did not expire on the day when the accounts of the year were made up (*g*).

(*d*) *Last* v. *London Assurance, &c.* (1885), 10 A. C. 438, *supra*, p. 120.

(*e*) *Equitable Life, &c.* v. *Bishop*, [1900] 1 Q. B. 177.

(*f*) Act of 1923, s. 16 (1), *infra*, p. 560.

(*g*) *Imperial Fire, &c.* v. *Wilson* (1876), 1 Tax C. 71; *Scottish Union, &c.* v. *Smiles; Northern, &c.* v. *Russell* (1889), 16 R. 461; 2 Tax C. 551, *supra*, p. 138; *General Accident, Fire, &c.* v. *McGowan*, [1908] A. C. 207. The decision of the House of Lords in the last case went no further than is here stated, and the headnote in the Law Reports is misleading, see per Earl LOREBURN in *Sun Insurance Office* v. *Clark*, [1912] A. C. at p. 453.

But as has already been seen, "there is no rule of law as to the proper way of making an estimate," and "what was a good method once may become inaccurate or obsolete" (*h*); and where the business is of such a character that it would be unfair to refuse a deduction of this kind, it is proper to carry forward annually at the close of the year a percentage of the premium income in order to allow for unexpired risks (*h*). In the case thus decided, it was contended that 40 per cent. was recognized in the insurance world as being the minimum allowance for this purpose, and the Crown did not contest the percentage. In most cases, therefore, it seems that a company which carries on a fire insurance business on modern lines, and whose distributed profits are not such as to make it obvious that such a deduction is unfair to the Revenue (*i*), will succeed in obtaining an allowance of this nature and probably at that percentage.

It is a necessary part of a fire insurance company's business that it should hold and occasionally sell investments; any profit or loss due to realization of investments must be included or deducted in arriving at the company's income; and such a deduction must be made if the company holds stocks of other companies which are amalgamated, and upon the amalgamation receives other stocks in substitution, with the result that a loss is incurred by the value of the new stocks being less than the cost price of the old stocks (*ii*).

Land Development.

In ascertaining the profits of a land development company for the purposes of Case I. (*j*), it is often difficult to analyze the accounts in such a way as to make sure that the whole of the expenses necessary to earn the gross receipts are set

(*h*) *Sun Insurance Office* v. *Clark*, [1912] A. C. 443. The paragraph in the text is based on Lord LOREBURN'S speech. An extract from Lord HALDANE'S speech is given at p. 116, *supra*.

(*i*) See per Lord LOREBURN at p. 453.

(*ii*) *Royal Insurance Co.* v. *Stephen* (1928), 44 T. L. R. 630; see p. 123, *supra*.

(*j*) A company of this kind may, in certain circumstances, be charged under Sched. A and Case III. of Sched. D, at the option of the Crown, instead of Case I.: see, *e.g.*, *Rosyth Building, &c. Co.* v. *Rogers* (1921), 8 Tax C. 11, *infra*, p. 213.

against the latter: where a company bought a piece of ground, built houses and created feu duties which it sold, it was held that the whole difference between the price paid for the ground and the price received for the feu duties did not represent profits; the price received had clearly been earned in part by the expense of building the houses, but it was equally obvious that the whole cost of the houses could not be deducted unless the ground were sold, which was not the case (*k*). In England, the same result would follow where ground rents are created; and the whole cost incurred would not be deducted unless the fee simple were sold.

The amounts of any assessments made under Schedule A must, of course, be deducted where the receipts from lettings are included in the account (*l*).

Retiring Allowances and Gratuities.

Pensions, allowances or gratuities paid by employers to their servants on retirement may be deductible (even though the contract of employment gives the employee no right to any such payment) in ascertaining the profits of the trade or profession of the employer, because the expectation of receiving such payments on retirement attracts persons of the class desired into the service of the employer at smaller salaries than they would otherwise demand (*ll*).

If the employer purchases an annuity for the retiring employee instead of himself making an annual payment, the purchase price of the annuity may be deductible (*m*). There would probably have been little or no contest in these cases had it not been for an earlier decision that no deduction was admissible where the payment to the employee was in fact made as a part of the consideration for the transfer to the employer of a business in which that

(*k*) *Furtado* v. *Cardonald Feuing Co.*, [1907] S. C. 36.

(*l*) But in *Salisbury House Estate, Ltd.* v. *Fry*, [1929] W. N. 185, *supra*, p. 54, it was held that no trade assessment could be made; and the *Rosyth* case, *supra*, was doubted.

(*ll*) *Smith* v. *Incorporated Council of Law Reporting*, [1914] 3 K. B. 674. Cf. *Mitchell* v. *B. W. Noble, Ltd.*, [1927] 1 K. B. 719, *supra*, p. 130.

(*m*) *Hancock* v. *General Reversionary, &c. Co., Ltd.*, [1919] 1 K. B. 25; but see the cases cited in note (*u*), *infra*, p. 142.

employee was previously employed (*n*). The reason given for the decision in the two cases first cited clearly did not apply here.

The principle laid down in those cases appears to apply to any payments made by an employer to widows or dependants after the death of an employee as well as to payments made to the employee himself (*o*).

Contributions to Superannuation Funds.

Any sum paid by an employer by way of contribution towards a superannuation fund has now been specifically made deductible as an expense of his trade (*p*), subject to the following conditions: First, the fund must be approved by the Commissioners of Inland Revenue (*q*). Secondly, if the sum contributed by an employer is an ordinary annual contribution (*r*), it is to be deducted as an expense incurred in the year in which the sum is paid; if it is not, the Commissioners of Inland Revenue may direct that it shall be spread over a period of years (*s*). If contributions are repaid to an employer, the trustees of the fund are to deduct tax thereon at the rate in force in the year of repayment, and the amount repaid is deemed to be income of the recipient for that year (*t*). Apart from the provision above referred to, a lump-sum contribution by an employer is not deductible in arriving at profits, because it is a capital expenditure (*u*).

(*n*) *Royal Insurance Co.* v. *Watson,* [1897] A. C. 1, *supra,* p. 130.

(*o*) Contributions towards retiring allowances, &c. made by the employee are discussed *infra,* p. 252.

(*p*) Finance Act, 1921, s. 32 (1), *infra,* p. 543.

(*q*) Sect. 32 (3); the conditions of approval, &c. are dealt with *infra,* pp. 252, 300.

(*r*) Defined in the Regulations made under sect. 32, reg. 5, *infra,* p. 622; the amount deductible is regulated by reg. 6.

(*s*) Sect. 32 (1), proviso (a); note that the Commissioners have no power to disallow the deduction, but only to direct when and in what portions it shall be allowed.

(*t*) Regulations made under sect. 32, reg. 7.

(*u*) *Rowntree* v. *Curtis,* [1925] 1 K. B. 328; *British Insulated, &c. Cables, Ltd.* v. *Atherton,* [1926] A. C. 205, *supra,* p. 129.

Annual Value of Business Premises.

The annual value of premises situate in the United Kingdom which are exclusively used for business purposes is to be taken into account in ascertaining the balance of profits and is properly to be deducted. The reason for the deduction has been variously put upon the grounds that that deduction is "an essential element to be taken into account in ascertaining the amount of the balance of profits," that it is "included in a very broad construction of the provision relating to disbursements and expenses" (*v*), or that it follows from the express words that "the computation of tax shall be made exclusive of the annual value of lands . . . . occupied for the purpose of" the trade or profession (*x*). The Courts at the present day lean to the view that the specific prohibitions and directions contained in the rules with relation to the computation of profits are subsidiary to the main principle that it is the profits ascertained on reasonable business methods which must be computed (*y*); so that the first reason given by Lord HERSCHELL would probably now be preferred (*z*).

A bank which for its own purposes requires the manager of one of its branches to reside in a portion of the premises and takes no rent from him is entitled to a deduction of the whole annual value of the premises including the residential portion; the bank are in the same position as if that portion were used in any other way for its purposes and business (*a*). The prohibition (*b*) against deducting the

(*v*) *Russell* v. *Town and County Bank* (1888), 13 A. C. 418, per Lord HERSCHELL at pp. 425—6. The Sched. A tax on "annual value" is dealt with in Chap. II.

(*x*) *General Hydraulic Power Co.* v. *Hancock,* [1914] 2 K. B. 21, *infra,* p. 144; per SCRUTTON, J., at pp. 28, 29, dealing with the rule as it appeared in the Act of 1842. The words in the text are taken from Rule 5 (1) of the rules applicable to Cases I. and II. as amended by the Act of 1926, *infra,* p. 501.

(*y*) See the extracts from the speeches in *Usher's Wiltshire Brewery, Ltd.* v. *Bruce,* set out *supra,* p. 117.

(*z*) See *Stevens* v. *E. Boustead & Co.*, [1918] 1 K. B. 382.

(*a*) *Russell* v. *Town and County Bank, supra;* see also *Tennant* v. *Smith, infra,* p. 311.

(*b*) Cases I. and II. r. 3 (c), as amended by Finance Act, 1921, s. 31, *infra,* p. 499; *e.g.*, a dwelling-house occupied by a solicitor or a physician, who uses a part of it as an office or a consulting room.

rent or annual value of any greater portion of a dwelling-house, &c. than is used for the purpose of the trade or profession, therefore, applies only to a dwelling-house occupied or rented by the person assessed under Schedule D (*b*).

Except to the limited extent stated below in the case of mills, factories, &c., no deduction of this kind is allowed where the lands used for the purpose of the trade are situate abroad (*c*).

With a similar exception, the amount of the deduction may not exceed that of the Schedule A assessment of the lands in question as reduced for purposes of collection (*d*) as it stands in the year of which the profits are being calculated (*e*). Thus, where a person owns the property on which his trade is carried on, subject to a feu duty, he cannot deduct as an expense of his trade a casualty payable in terms of the feu charter (*f*).

Traders who occupy mills, factories and similar premises situate in the United Kingdom are allowed a deduction of their full annual value in arriving at profits for Schedule D (*ff*); in Scotland, the relief given in respect of rates and other burdens payable by the landlord does not reduce the amount of this deduction, although the trader is himself the owner of the lands (*g*). The assessment under Schedule A of such mills, &c. is, however, reduced by one-sixth (*d*). In the cases of traders assessable under Case I. who own and occupy mills, &c. situate abroad, and in the cases of persons carrying on mines and other concerns which were formerly included in Class III. of Schedule A, but

(*b*) See note (*a*), previous page.

(*c*) Rule 5 (1), proviso, *infra*, p. 501; the decision in *Stevens* v. *Boustead*, *supra*, therefore no longer applies except to a limited extent as regards mills, &c.: Finance Act, 1919, s. 18 (1), *infra*, p. 526.

(*d*) Sched. A, No. V. r. 7, *vide supra*, p. 42.

(*e*) Rule 5 (2), *infra*, p. 501; *General Hydraulic Power Co.* v. *Hancock*, [1914] 2 K. B. 21, *supra*, note (*x*). The question whether this rule affects the amount of the debits allowable to brewers in respect of tied houses remains to be decided by the C. A. in *Collyer* v. *Hoare & Co., Ltd.*, *supra*, p. 134, note (*g*).

(*f*) *Dow* v. *Merchiston Castle School, Ltd.* (1921), 58 S. L. R. 585; 8 Tax C. 149.

(*ff*) See Rule 5 (2), proviso.

(*g*) *I. R.* v. *Scottish Central Electric Power Co.*, [1928] S. C. 260; 13 Tax C. 331.

have now been transferred to Case I. of Schedule D, there is provision for deducting (as expenses incurred in any year) one-sixth only of the annual value of mills, &c. situate abroad, or included in the concern, and owned and occupied by those persons (*h*). The annual value of mills, &c. situate abroad is to be ascertained on the same principles as that of mills, &c. in the United Kingdom (*i*).

The meaning of the phrase "mills, factories or similar premises" is not very clear; it has been admitted to apply to the lands and heritages owned and occupied by an electric power company for the purposes of its trade, but it cannot be said as a matter of law to apply to the whole of a gas undertaking (*ii*).

In addition to the above, expenditure on repairs of business premises may also be deducted, but the amount must not exceed what has actually been spent in the period or year of account (*j*).

Where a person pays tax on annual value under Schedule B as an occupier of lands, and sells the produce of the land himself, he is not liable to be assessed under Schedule D on the profits derived from growing and selling that produce, except to the extent to which he would have earned a commission on sales if the produce had been grown by another person (*jj*).

Subscriptions to Trade Associations.

Although it may be reasonable for a trader to subscribe to a trade association, it is not the case that the amount

(*h*) Finance Act, 1919, s. 18 (1), (2), (3), *infra*, p. 526; *Largo and Lundin Links Gas Co., Ltd.* v. *Smith* (1922), 59 S. L. R. 517; 8 Tax C. 296. Sect. 18 (2) is continued in force, notwithstanding the transfer to Sched. D, by sect. 28 and the 3rd Sched. to the Act of 1926, *infra*, p. 579.

(*i*) Finance Act, 1919, s. 18 (1), (3), *infra*, p. 526; as to the annual value of those forming part of a "concern," see the case last cited and p. 154, *infra*.

(*ii*) *I. R.* v. *Scottish Central Electric Power Co.; Largo, &c. Gas Co., Ltd.* v. *Smith, supra*.

(*j*) Act of 1918, Cases I. and II. r. 3 (d) as amended, *infra*, p. 499. As to the account year, see p. 161, *infra*. The 3rd Sched. to the Act of 1926 does not appear to prevent this deduction. See *Hyam* v. *I. R.*, [1929] S. C. 384.

(*jj*) *Back* v. *Daniels*, [1925] 1 K. B. 526, *supra*, p. 67.

or the whole amount of every such subscription may be deducted in ascertaining the profits of the trade. It depends upon the purposes to which the money is applied whether the subscription, or a particular portion of it, is deductible or not. A trade association may apply its funds to very different purposes; and "some of these purposes might involve amounts which if charged in the account of the individual member would be proper deductions as being expenses incurred with a view to earning profits, whereas others might not" (*k*). The question whether the expenditure is an outlay to earn profit or an application of profit earned is one of fact (*l*).

Where a trade association devotes the whole of the subscriptions received to paying its members an indemnity on any deficiency of output, due to strikes or other causes, the subscriptions represent an application of profit earned, and are laid out not for the purposes of the trade, but to provide for a contingency in which the trade cannot be worked; such subscriptions are not deductible (*m*). On the other hand, where a pooling association for fixing prices, preventing competition amongst its members, and thus increasing their profits, receives subscriptions from them, and returns certain sums to those members who receive less than their agreed share of the total orders received by all the members, the excess of any member's subscriptions over his receipts from the association is a proper deduction (*n*). But the accounts of such an association may have to be analyzed so as to show how the money is actually spent (*o*). A company which is a member of an association for mutual insurance against claims to compensation for fatal accidents to

(*k*) *Lochgelly Iron and Coal Co., Ltd.* v. *Crawford,* [1913] S. C. 810, per Lord DUNEDIN, L.P., at p. 814; 6 Tax C. 267; cf. *Ward* v. *Commrs. of Taxes, supra,* p. 133, note (*d*).

(*l*) *Grahamston Iron Co.* v. *Crawford,* [1915] S. C. 536; 7 Tax C. 25; per Lord JOHNSTON at p. 29, citing *Moore* v. *Stewarts and Lloyds, Ltd.* (1906), 8 F. 1129; 6 Tax C. 501, per Lord DUNEDIN at p. 507.

(*m*) *Rhymney Iron Co., Ltd.* v. *Fowler,* [1896] 2 Q. B. 79.

(*n*) *Guest, Keen & Nettlefolds, Ltd.* v. *Fowler,* [1910] 1 K. B. 713.

(*o*) *Grahamston Iron Co.* v. *Crawford, supra;* see, however, *C. Clifford, Ltd.* v. *Puttick* (1928), 7 A. T. C. 343.

workmen is entitled to deduct the amount of calls paid to the association (*p*).

That part of a subscription to an association which covers its contribution to the expenses of a Conciliation Board may be deducted; not so the part covering its subscriptions to the Mining Association of Great Britain, nor the part expended in experiments on the explosive properties of coal dust conducted at the request of the Home Secretary (*q*).

Excess Profits Duty: Corporation Profits Tax.

A deduction is allowed of excess profits duty paid. It is made in computing the profits of the income tax year which includes the end of the accounting period in respect of which the excess profits duty has been paid; provision is made for allowance or repayment if the amount of the latter duty has not been ascertained in time (*t*). There is an exception with regard to excess profits duty imposed in respect of the sale of trading stock otherwise than in the ordinary course of trade (*u*). The rule applies also to munitions exchequer payments (*v*); but not to interest on arrears of either duty or payments (*x*). Income tax has to be paid on any repayment of excess profits duty in the year in which it is repaid, even though the trade is no longer being carried on (*z*).

Dominion and Foreign Income Tax.

It has now been provided that Dominion income tax shall not give rise to any deduction in estimating income for the purposes of the United Kingdom tax, but that on

(*p*) *Thomas* v. *R. Evans & Co., Ltd.*, [1927] 1 K. B. 33; see also *Jones* v. *S.-W. Lancs. Coal Assn.*, [1927] A. C. 827, *supra*, p. 82.

(*q*) *Lochgelly Iron, &c. Co.* v. *Crawford, supra.*

(*t*) Sched. D, Cases I. and II. r. 4, *infra*, p. 500.

(*u*) See Finance Act, 1918 (8 & 9 Geo. 5, c. 15), s. 35.

(*v*) Rule 4 (4), (6).

(*x*) Finance Act, 1922, s. 29, *infra*, p. 553.

(*z*) Sched. D, Cases I. and II. r. 4 (1); *Eglinton Silica Brick Co., Ltd.* v. *Marrian*, [1924] S. C. 546; *Kirke's Trees.* v. *I. R.*, [1927] S. C. (H. L.) 56; 11 Tax C. 323; see also *Hill* v. *Matthews* (1925), 10 Tax C. 25; *Nesbitt, Ltd.* v. *Mitchell* (1926), 11 Tax C. 211.

the contrary an addition is to be made in respect of any Dominion income tax paid or payable (*a*). Accordingly, if a person or company carrying on business in this country is liable to Dominion tax, the gross income on which that tax is payable is to be brought into account, even though in fact that person or company receives only a net income after deduction of Dominion tax (*b*). Though there is no special provision as regards foreign income tax, it cannot be deducted, or, if already deducted, it must be added back by bringing into account the gross income (*b*).

Depreciation of Machinery and Plant.

The general rule that no allowance for diminished value of assets can be made in ascertaining profits has already been stated (*c*). An exception to this rule is made in respect to machinery and plant used for the purposes of the trade (*d*); allowances are made both for diminished value by reason of wear and tear (*e*), and for expenses incurred in replacing what is obsolete (*f*). There is no such allowance in respect of buildings (*g*).

The following matters have been decided or admitted to be "plant" used for the purposes of the trade within these provisions: ships (*h*), a hulk used for coaling ships (*i*), railway locomotives, carriages, wagons and tools (*k*), and

(*a*) Finance Act, 1920, s. 27 (4); *vide supra*, p. 25, for the relief from tax given in cases of this kind.

(*b*) The principle applicable is that laid down in *Ashton Gas Co.* v. *A.-G.*, and *Samuel* v. *I. R.*, *infra*, pp. 265, 266.

(*c*) *Vide supra*, pp. 126—130. Actual expenditure on the supply or repair of articles used for the trade is deductible: Sched. D, Cases I. and II. r. 3 (d).

(*d*) See *Union Cold Storage Co., Ltd.* v. *Jones* (1924), 8 Tax C. 725.

(*e*) Sched. D, Cases I. and II. r. 6, *infra*, p. 501, re-enacting Customs, &c. Act, 1878 (41 & 42 Vict. c. 15), s. 12. See also Act of 1918, ss. 53, 56, *infra*, p. 423.

(*f*) Rule 7. Rules 6 and 7 are applied to professions, &c. and to the occupation of lands including woodlands, when assessed under Sched. D by Act of 1925, s. 16, *infra*, p. 572.

(*g*) *Addie* v. *I. R.* (1875), 2 R. 431; 1 Tax C. 1; *Forder* v. *Handyside* (1876), 1 Ex. D. 233, *supra*, p. 128.

(*h*) See the cases cited *infra*, pp. 150—152.

(*i*) *John Hall, Junr. & Co.* v. *Rickman*, [1906] 1 K. B. 311, *infra*, p. 151.

(*k*) *Caledonian Rail. Co.* v. *Banks* (1880), 8 R. 89; 1 Tax C. 487, *infra*.

tramway rails (*a*). On the other hand, a stallion which serves mares for payment is not plant, and the loss of value due to its age is not loss by reason of wear and tear, within these provisions (*b*); and the bed of a harbour is not "plant" (*c*); nor are law books (*cc*).

The allowance for diminution of value due to wear and tear is made in favour of the person carrying on the trade, if the machinery or plant belongs to him; or if it is let to him on the terms of his being bound to maintain it and deliver it over in good condition (*d*). He must claim it in making his annual return (*e*).

Where on the other hand the machinery or plant is let on such terms that the burden of maintaining and restoring it falls on the lessor, the lessee gets no allowance; but the lessor may claim repayment if tax has been deducted against him on payment of the rent; the claim must be made within twelve months after the expiration of the year of assessment (*f*).

The allowance due to obsolescence can be claimed only by a person who uses the machinery or plant for the purposes of his trade, and who has in fact replaced it (*g*).

Method of Calculating Deduction for Wear and Tear.

The deduction for wear and tear is to be "just and reasonable as representing the diminished value" (that is, the diminution of value) "by reason of wear and tear during the year;" the machinery or plant must of course be "used for the purposes of the trade;" the Commissioners are to fix the amount, subject to a reference to the Board of Referees if application is made on behalf of a considerable number of persons engaged in a class of trade (*h*).

(*a*) *London County Council* v. *Edwards* (1909), 5 Tax C. 383, *infra*, p. 150.

(*b*) *Derby (Earl)* v. *Aylmer*, [1915] 3 K. B. 374; see *Derby (Earl)* v. *Bassom* (1926), 42 T. L. R. 380, *supra*, p. 67.

(*c*) *Dumbarton Harbour Board* v. *Cox* (1918), 7 Tax C. 147, *supra*, p. 129.

(*cc*) *Daphne* v. *Shaw*, [1926] W. N. 27; 11 Tax C. 256.

(*d*) Rule 6 (1), (2), *infra*, p. 501.

(*e*) Rule 6 (4), *infra*, p. 502; see Chap. XV.

(*f*) Rule 6 (5), *infra*, p. 502; as to deduction of tax against rent, *vide supra*, p. 55.

(*g*) Rule 7, *infra*, p. 503.

(*h*) Rule 6 (1), (7), *infra*, pp. 501, 502.

The Courts have been very loth to interfere with any decision of the Commissioners as to what is just and reasonable in a particular case. In connection with railway engines, carriages and wagons, actual expenditure on renewals (as well as on repairs) had been deducted; and the Commissioners refused any further allowance in respect of wear and tear; nor would they make any allowance in respect of engines or carriages which were not yet five years old, and had therefore required no repair or renewal, holding that they had to ascertain whether the plant had suffered any diminution in value as part of a going concern, and not a diminution in selling value; the Court declined to say that these refusals were wrong (*i*). Where the method of allowing actual expenses of renewal had been applied for many years by agreement to the rails of a horse tramway, and the tramway was converted to an electric system, the Court declined to direct the Commissioners to change the method and to allow a percentage of the value of the horse rails which would have had to be replaced in future years if there had been no conversion (*k*).

With regard to steamships, it has indeed been held in Scotland that the allowance must be equivalent to the actual diminution of value that has taken place in the year and must not be a mere sinking fund (calculated at so much per cent. on the value of the ships) to replace the ships at the end of their life (*l*). But in England the Courts have held that the question is one of fact, and that the Commissioners could not be said to be wrong in law whatever view they took upon it (*m*). It appears, however, that the English Judges, if the question had been for them to decide, would have answered it in much the same way as the Scottish.

(*i*) *Caledonian Rail. Co.* v. *Banks* (1880), 8 R. 89; 1 Tax C. 487.

(*k*) *London County Council* v. *Edwards* (1909), 5 Tax C. 383.

(*l*) *Leith, Hull and Hamburg Packet Co.* v. *Musgrave* (1899), 1 F. 1117; 4 Tax C. 80; in the earlier case of *The same* v. *Bain* (1897), 3 Tax C. 560, no decision was come to.

(*m*) *Peninsular and Oriental S. N. Co.* v. *Leslie* (1900), 4 Tax C. 177; *British India S. N. Co.* v. *Leslie, ibid.* 257.

Generally speaking, then, the question what is a just and reasonable allowance as representing the diminished value of machinery or plant (including ships) by reason of wear and tear during the year is a question of fact, to be decided from a business point of view. It is doubtful (as indicated above) whether the law prevents this allowance from being calculated as a sinking fund is calculated; be that as it may, the actual depreciation in value that has taken place during the year must be allowed, and in most cases a sinking fund will not be an appropriate method of calculating the amount of that depreciation. The allowance is not intended to replace the owners of the machinery or plant in possession of capital invested in it, at the end of its life; but the probable life of the machinery or plant and its probable breaking-up value are relevant considerations in fixing the allowance.

The "diminished value during the year" will usually be estimated according to the same year for which the profits are computed (*n*); but it would seem to be permissible for the Commissioners to estimate the depreciation with reference to the year of assessment itself, if they think fit (*o*).

The aggregate of the allowances made to the person by whom the trade is carried on, must not exceed the actual cost of the machinery or plant to that person, including any capital expenditure by way of renewal, improvement or reinstatement (*p*). It will be observed that this rule refers only to the period during which a particular person (which includes, of course, a company or other corporation) has carried on the trade; if a business, therefore, has been bought as a going concern, it is the price then paid for the

(*n*) *Vide infra*, p. 161.

(*o*) Cf. *Cunard S.S. Co.* v. *Coulson*, [1899] 1 Q. B. 865; since the abolition of averaging, the point there decided does not arise.

(*p*) Sched. D, Cases I. and II. r. 6 (6), *infra*, p. 502. This rule first appeared as sect. 26 (2) of the Finance Act, 1907, and was passed to get rid of the decision in *John Hall, Junr. & Co.* v. *Rickman*, [1906] 1 K. B. 311, that where the trader had in a series of previous years been allowed the whole cost of the ships to him (less breaking-up value), the Commissioners were still bound to make such an allowance as was just and reasonable, without taking into account previous allowances. See also note (*r*).

machinery or plant which regulates the total of the allowances, and not its prime cost (*p*). The rule leaves the question open whether the machinery or plant for which allowances are claimed is to be treated as a whole, or in separate items; and it may be appropriate to treat, say, each ship owned by a shipping company as a separate matter, and to deal as a whole with, say, the machinery and plant in an engineering workshop.

The rule does not take account of any breaking-up value; and therefore it is the whole cost to the trader that regulates the total of the allowances.

Where the profits in any year are not sufficient for full effect to be given to the allowances for depreciation by wear and tear, the allowance or the balance of it may be carried over to the next year (*q*), although the premises have changed hands in the meantime; for this purpose the allowance is not personal to the actual trader (*r*).

Calculation of Allowance for Obsolescence.

The allowance in respect of any plant or machinery that has become obsolete is deductible as part of the expenses of the account year (*s*). Moreover, it differs from the allowance for wear and tear in being an allowance for actual expenditure and not an estimate; the deduction can only be made where the plant or machinery has been in fact replaced during the year. Its amount is regulated, not by the cost of the new plant or machinery installed, but by the actual cost of that which has been replaced, less any sum actually realized by its sale, and reduced by the total amount of the allowances made on account of the wear and tear of that plant or machinery. Where these

(*p*) See note (*p*), previous page.

(*q*) Rule 6 (3), *infra*, p. 502.

(*r*) *Scottish Shire Line, Ltd.* v. *Lethem*, [1912] S. C. 1108; 6 Tax C. 91. See, however, the provisions for computation of profits on succession to a business enacted by sect. 32 of the Act of 1927, *infra*, p. 167.

(*s*) Rule 7; the decision against such an allowance in *Burnley S.S. Co.* v. *Aikin* (1894), 21 R. 965; 3 Tax C. 275, is no longer applicable. This allowance can only be claimed by the person who uses, and has replaced, the machinery or plant in question, *vide supra*, p. 149.

allowances have been made in a lump sum for an aggregate of plant or machinery, it may sometimes be difficult to attribute a definite amount to the particular item that has been replaced.

A piece of plant or machinery need not be worn out in order to be "obsolete"; and it may be "obsolete" if discarded by the trader in question, though less progressive persons in the same line of business might be able to make use of it (*t*).

Concerns transferred from Schedule A.

As has been seen (*u*), the Act of 1926 transfers to Case I. of Schedule D "quarries of stone, slate, limestone or chalk, mines of coal, tin, lead, copper, mundic, iron, and other mines," when carried on as mercantile undertakings, as well as "ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of the like nature having profits from or arising out of any lands." These quarries, mines and "concerns" were formerly charged under No. III. of Schedule A, but "according to the rules applicable to Schedule D, so far as the same are consistent with" No. III. (*x*). Many of the points decided with regard to these properties before the transfer are, therefore, still material; and the rules applicable to Case I. are now applied to the assessment of the transferred properties, subject to certain provisions brought over from Schedule A (*y*). Accordingly, the earlier parts of this Chapter are intended to embrace these quarries, mines and concerns as well as other trades; for instance, the provisions for allowances in respect of depreciation and obsolescence are now clearly

(*t*) Per ROWLATT, J., in *South Metropolitan Gas Co.* v. *Dadd* (1927), 13 Tax C. 205, where the question was held to be one of fact.

(*u*) *Supra*, pp. 33, 78; Act of 1926, s. 28, *infra*, p. 579.

(*x*) No. III. r. 8; the exact effect of this rule is, happily, now a question of the past.

(*y*) No. III. rr. 4, 5, 7, *infra*, p. 457; see Act of 1926, 3rd Sched., *infra*, p. 587.

applicable (*z*); but there are certain points which affect these properties in particular, and they will next be noted.

Among the rules still applicable to the transferred properties is Rule 5 of No. III. (*a*), by which the profits have to be calculated before any distribution of any share or dividend is made, or any payment to a "creditor or other person . . . . who has a claim on the profits." The words quoted are limited to persons like debenture-holders who have claims on the net profits; that is, on "the incomings of the concern after deducting the expenses of earning and obtaining them" (*b*); it would be absurd to suppose that sums due to be paid out of the gross receipts to an ordinary business creditor, *e.g.*, for goods supplied, are not deductible in arriving at the profits. Neither must there be any deduction for any payment in the nature of rent or royalties to the owner of the soil or property (*a*). But where any land (such as a general office) used or occupied in connection with the concern is separately assessed under the General Rule No. I. (*c*), its annual value must be deducted; and there is an allowance of one-sixth of the annual value of mills, factories and similar premises not separately assessed (*d*).

Deductions for Rates, Taxes, &c.

The amount of the income tax itself cannot be deducted (*e*); but there seems to be no reason why tenant's rates and taxes in respect of the land occupied by the concern should not be deducted, even though they are payable

(*z*) *Supra*, p. 148. Such decisions as *Addie* v. *I. R.* (1875), 1 Tax C. 1; *Forder* v. *Handyside* (1876), 1 Ex. D. 233; and *Clayton* v. *Newcastle-under-Lyme Corporation* (1888), 2 Tax C. 416, are, therefore, no longer valid, except as regards depreciation of buildings.

(*a*) Sched. A, No. III. r. 5; the language is archaic and illogical: see *Mersey Docks* v. *Lucas* (1883), 8 A. C. 891, per Lord SELBORNE at p. 903, *supra*, p. 120. See also *Broughton Coal Co.* v. *Kirkpatrick* (1884), 14 Q. B. D. 491, *supra*, p. 128; and cf. General Rule 20, which is also applicable, *infra*, p. 521. Tax is deductible in paying interest and in paying rent or royalties: *vide infra*, p. 262. See also *Ashton Gas Co.* v. *A.-G.*, *infra*, p. 264. (*b*) Per Lord SELBORNE, *loc. cit.*

(*c*) See "Annual Value of Business Premises," *supra*, p. 143.

(*d*) Act of 1919, s. 18 (2), (3), *infra*, p. 526; Act of 1926, 3rd Sched.

(*e*) *Ashton Gas Co.* v. *A.-G.*, [1906] A. C. 10, and the cases cited in connection with it, *infra*, pp. 264—267.

by the landlord under agreement with the tenant, or because he is himself the occupier (*f*); the same may be said of any composition for tithes (*f*) and unredeemed land tax, drainage rates and private expenditure on sea walls and embankments (*g*). All these may be "proper debit items" (*h*), even if the rules of Schedule A cited in the notes are no longer specifically applicable.

Mines and Quarries.

Under Schedule A it was not permissible (*i*) to arrive at the profits of a mine (or a quarry) according to the method employed with regard to a trade in ordinary goods, by which the stock-in-trade is valued at the beginning of the year and again at the end, and the difference (as the case may be) debited or credited in the trading account before the balance is struck; in spite of the transfer to Schedule A, it is clear that this decision still holds good. Such a method would involve an allowance for the exhausted minerals; and no deduction for capital wastage can be made under Schedule D (*k*).

A special rule provides for the case of adventurers' mines (of which the leading examples are the cost-book tin-mines in the Duchy of Cornwall) and allows each adventurer to have a separate assessment of his profits if he desires, and to set off against the profits on his share in one such mine the loss on his share in any other (*l*).

Municipal Concerns: Gas and Water Undertakings.

A municipal corporation is taxable under Case I. of Schedule D in respect of many of its sources of revenue,

(*f*) See Sched. A, No. IV. r. 1 (a), *supra*, p. 46. As to Scotland, see Sched. A, No. V. r. 4, and *I. R.* v. *Scottish Central Electric Power Co.*, *supra*, p. 144.

(*g*) See Sched. A, No. V. r. 1 (e), (f), (g), *infra*, p. 479.

(*h*) *Vide supra*, p. 117.

(*i*) *Coltness Iron Co.* v. *Black* (1881), 6 A. C. 315, *supra*, p. 127.

(*k*) See "Capital and Current Expenditure," *supra*, p. 126. The specific allowances for depreciation of machinery and plant are considered *supra*, p. 148.

(*l*) Sched. A, No. III. r. 7; cf. *Morant* v. *Wheal Grenville Mining Co.* (1894), 3 Tax C. 298, *supra*, p. 127.

whether on the net receipts of trading concerns (*m*) or on the net proceeds of market and other dues received under statute or charter. In calculating the profits it can deduct the expenses necessary to earn the particular receipts in question, but not those of general administration (*n*).

In arriving at the profits derived from its gasworks (or its electrical undertaking), a local authority may not deduct the expenses incurred in lighting the streets (*o*).

The profits of a waterworks in the hands of a local authority do not include the proceeds of a compulsory rate, which is made on all the houses within the area of the authority's jurisdiction whether those houses take the water or not (*p*). But in the more ordinary case where the liability to payment of the water rate (which is not here really a rate at all, but the price of water sold) or water rent depends on the exercise of an option to take the water, the payments received are taxable profits whether they are earned outside the authority's jurisdiction (*q*), or within it (*r*), and whether the payment is for a domestic supply and calculated on rateable value (*r*) or for a non-domestic supply by meter (*q*). And if the payment is in fact made by agreement, it is to be included in the profits, even though the payer may have a legal claim to receive the water without entering into an agreement (*s*).

(*m*) See "Public Undertakings" in Chap. V., *supra*, p. 83. Tramways and electric undertakings were not treated as coming within No. III. of Sched. A; but since the transfer (*supra*, p. 153) all the revenue-producing undertakings of a local authority appear to be assessable under Case I. A public health authority is not now liable to tax in respect of a sewer vested in it, even though it receives a payment from some other authority for the use of the sewer: Finance Act, 1921, s. 34, *vide infra*, p. 303.

(*n*) *Vide infra*, p. 157.

(*o*) *Dillon* v. *Corporation of Haverfordwest*, [1891] 1 Q. B. 575, *supra*, p. 86.

(*p*) *Glasgow Water Commrs.* v. *Inland Revenue* (1875), 2 R. 708; 1 Tax C. 28, *supra*, p. 84.

(*q*) *Miller* v. *Glasgow Water Commrs.* (1886), 13 R. 489; 2 Tax C. 131, *supra*, p. 84.

(*r*) *Mullingar R. D. C.* v. *Rowles*, [1913] 2 Ir. R. 44; 6 Tax C. 85.

(*s*) *Allan* v. *Hamilton Waterworks Commrs.* (1887), 24 S. L. R. 360; 2 Tax C. 194.

Other Municipal Revenues: Markets.

Coal dues given by a local Act to a municipal corporation and leviable on every chaldron of coals brought into the town are taxable in the hands of the corporation; although these dues were in fact paid into a common fund for the improvement of the town, the Courts rejected the contention that they were analogous to a local rate; their incidence was not in fact confined to the inhabitants of the town, and they were of the nature of harbour or market dues (*t*).

A city corporation is taxable in respect of its receipts from markets, and cannot charge against them the general expenses of its establishment or of the civil government of the city; the receipts from each source of municipal revenue are to be kept separate and its expenses of earning it charged separately against the receipts from that source (*u*). These observations apply equally to miscellaneous revenues, such as fines for renewals of leases, burgess fines, and so on (*x*). Probably the loss on one municipal concern may now be set against the profit of another (*y*), but that will not allow general expenses of administration to be set against the receipts of a revenue-bearing concern (*z*).

So far as "customs" tolls leviable in burghs in Scotland are applied in the burgh in defraying expenses of paving, lighting, cleansing or police, or of similar public burdens, repayment of tax may be claimed (*a*).

(*t*) *A.-G.* v. *Black* (1871), L. R. 6 Ex. 78, 308, *supra*, p. 84; *infra*, p. 239.

(*u*) *A.-G.* v. *Scott* (1873), 28 L. T. 302; *In re Birmingham Corporation* (1875), 1 Tax C. 26; *Adam* v. *Maughan* (1889), 27 S. L. R. 64; 2 Tax C. 541, *supra*, p. 38. The slaughter-house dealt with in the last-named case was afterwards held to be taxable under No. I. of Sched. A, and not under No. III.: *Harris* v. *Edinburgh Corporation*, *supra*, p. 39; and is, therefore, not within Case I. of Sched. D.

(*x*) *A.-G.* v. *Scott*, *supra*; *Webber* v. *Glasgow Corporation* (1893), 30 S. L. R. 255; 3 Tax C. 202.

(*y*) *Vide infra*, p. 170.

(*z*) See, however, the cases decided on deduction of income tax in relation to municipal revenues, *infra*, p. 195.

(*a*) The repayment must be claimed, and the facts proved, before the Special Commissioners, sect. 35, *infra*, p. 417. The claim must be made within six years after the year of assessment to which it relates, Act of 1923, s. 30, *infra*, p. 567.

Inland Navigations: Harbours and Docks.

An inland navigation (*b*) may have other taxable receipts besides tolls; accordingly, the Humber Conservancy Board were held to be liable to bring into their accounts for tax purposes contributions payable to them under their local Act by four railway companies and another navigation authority, each of which had an interest in the navigation of the Humber: the Conservancy Board were lessees of the bed of that estuary; these contributions were held not to be analogous to a rate (*c*).

There is no specific mention of ports or harbours in No. III. of Schedule A, though docks are mentioned; but in *Mersey Docks and Harbour Board* v. *Lucas* (*d*), no distinction was made between rates and dues paid for the use of the docks or other hereditaments vested in the authority, and port or harbour rates or dues and so on, which were paid for the use of the port or the harbour and are unconnected with any corporeal hereditament. Such a distinction was not material to the point decided (*e*), namely, that the Board were taxable on the profits derived from dues, although they were bound to apply to the repayment and extinction of loans and annuities any surplus arising therefrom after payment of expenses and of interest (*d*). But since the decision in the case of the *Forth Conservancy Board* (*e*), it is very doubtful whether port or harbour dues which are not earned upon soil vested in the dock authority

(*b*) *Vide supra*. p. 86; an inland navigation was not taxable under Sched. A, No. III., and is not taxable under Case I. of Sched. D in respect of tolls if it does not own the land over which the tolls arise: *I. R.* v. *Forth Conservancy Board*, [1929] A. C. 213, *supra*, p. 86. See also *Severn Fishery Board* v. *O'May*, [1919] 2 K. B. 484, *infra*, p. 238.

(*c*) *Humber Conservancy Board* v. *Bater*, [1914] 3 K. B. 449, distinguishing *Glasgow Water Commrs.* v. *I. R.* (1875), 1 Tax C. 28, *supra*, p. 156. The contributions were held to be chargeable under No. III. of Sched. A or, in the alternative, under Case VI. of Sched. D (*infra*, p. 239); they are now, therefore, taxable under Case I. or Case VI.

(*d*) (1883), 8 A. C. 891, *supra*, p. 85; followed in *Sowrey* v. *King's Lynn Harbour Commrs.* (1887), 2 Tax C. 201. Cf. also *A.-G.* v. *Black* (1871), L. R. 6 Ex. 308, at pp. 310, 311, *supra*, p. 157.

(*e*) *I. R.* v. *Forth Conservancy Board*, [1929] A. C. 213, per Lord BUCKMASTER at p. 219.

can be brought into account for purposes of charge under Case I. of Schedule D.

The silting of a harbour does not give rise to an allowance for depreciation (*f*), and the expenses of dredging a harbour (which were admitted by the Crown for the purposes of the case to be deductible in ascertaining the profits as sums expended for "repairs") must be deducted against the profits of the particular year only in which they are incurred (*g*).

Railways.

Where a railway company (during the year on which the profits are calculated) runs a steamboat service under statutory powers, the railway and steamboat services form a single undertaking, the net profits of which are to be ascertained as a whole, and therefore any loss on the steamers is deductible against the profit earned on the railway lines (*h*). It has been pointed out above that expenditure on improvements is inadmissible as a deduction, being a capital payment (*i*). But the practice of deducting year by year the expense of renewing worn-out parts by parts of the same kind is unobjectionable (*k*); though it may lead to difficulty in securing a proper allowance for depreciation when larger replacements or renewals have to be made (*k*).

A company which, under a working agreement, maintained a railway belonging to another company, worked the

(*f*) As to allowances for depreciation, *vide supra*, p. 148.

(*g*) *Dumbarton Harbour Board* v. *Cox*, [1919] S. C. 162; 7 Tax C. 147, *supra*, p. 129; Sched. D, Cases I. and II. r. 3 (d) as amended, *infra*, p. 499, prevents the spreading out of the cost over any period of years, however reasonable this might appear to be in the case of repairs which are required only at longer intervals than a year. The cost of such repairs is not necessarily capital expenditure; but see per Lord STRATHCLYDE, L.P., in the case cited; and cf. *Ounsworth* v. *Vickers*, [1915] 3 K. B. 267, *supra*, p. 129.

(*h*) *Highland Rail. Co.* v. *Special Commrs.* (1885), 13 R. 199; 2 Tax C. 151; the deduction for loss included both loss on working and loss by depreciation (*vide supra*, p. 148), and it was held to make no difference that the company did not carry on the steamer service in the year of assessment. The form of the special case is somewhat confusing, as it appears in the reports.

(*i*) *Highland Rail. Co.* v. *Special Commrs.* (1889), 16 R. 950; 2 Tax C. 485, *supra*, p. 128.

(*k*) See last case; *Caledonian Rail. Co.* v. *Banks; London County Council* v. *Edwards, supra*, p. 150.

traffic upon it, and collected its revenues, half of which it paid to the owning company, while the owning company itself paid rates, taxes, interest, &c., has been held not to be "carrying on the concern," and not to be assessable separately in respect of that railway; the working company's receipts from this railway had been credited, and its outgoings in that respect debited, in its own accounts (*l*).

Burial Grounds and Cemeteries.

In arriving at the profits of a cemetery company, no deduction can be made in respect of capital lost by selling in perpetuity rights of burial (*m*). It has been held in Scotland to follow from that decision that a cemetery company cannot deduct against the receipts from such sales during the year the expenses in perpetuity of keeping in order the grave-spaces concerned (*n*).

The contrary has been held in England, and LUSH, J., said: "The true profit earned by the appellants is the profit that remains when they have discharged and met the expenditure they have undertaken to discharge and meet in consideration of the payments, and although . . . . the sums received are income and not capital, yet it would be wrong to treat the whole of the moneys received as profit or money earned; but against the payments which the appellants receive ought to be set off the expenses they will incur in order to earn the money so paid" (*o*). It is submitted that, for the reasons given by LUSH, J., the English decision is correct.

(*l*) *Caledonian Rail. Co.* v. *Hassall* (1919), 56 S. L. R. 506; 7 Tax C. 440; in view of sect. 18 of the Railways Act, 1921, this decision may still have some application.

(*m*) *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1889), 17 R. 154; 2 Tax C. 516, *supra*, p. 128.

(*n*) *Paisley Cemetery Co.* v. *Reith* (1898), 25 R. 1080; 4 Tax C. 1.

(*o*) *London Cemetery Co.* v. *Barnes*, [1917] 2 K. B. 496. In neither case, although they contracted to keep the grave-spaces in order for all time, was there any obligation on the company to set aside the capital sums received for the purpose.

Assessment on Profits of the Preceding Year.

The method of calculating the profits of a trade, profession or vocation has now been considered. The question remains, for what year or period those profits are to be calculated. The year of assessment runs from the 6th April to 5th April (*a*). In general (and apart from trades, &c. recently set up or commenced (*b*)), the profits charged are those of the "year preceding" (*c*). But as accounts are not usually made up for a year ending on the 5th April, provision is made for indicating the account period that is to be taken where "it has been customary to make up accounts" (*d*). Where this has not been customary, presumably the actual figures of the year ending 5th April must be taken (*b*). If an account for a period of one year was made up for the trade to a date within the year preceding the year of assessment, then the profits or gains of that period are the profits or gains on which the tax is to be charged in the year of assessment (*dd*). But if there was no such account made up, or if more accounts than one were made up to dates within the year preceding the year of assessment, then the Commissioners of Inland Revenue are to decide what period of twelve months is to be taken for this purpose (*e*). If this curiously worded provision is to be read literally, it would appear to enable the Inland Revenue, even in the common case of a company which makes up its accounts for six-monthly periods, to select at its discretion any period of twelve months that it thinks

(*a*) *Vide supra*, p. 5. (*b*) *Vide infra*, p. 163.

(*c*) Act of 1926, s. 29 (1), by which the three years' average was abolished for the years of assessment 1927—8 and onwards: see s. 37 (2), *infra*, pp. 579, 586; Act of 1927, s. 23, *infra*, p. 589.

(*d*) Act of 1926, s. 34, *infra*, p. 584. The rule applicable to Case I. has "ceased to have effect" on this point (see Act of 1927, s. 29 (1)), and with it the decision in *Borthwick, Ltd.* v. *Nolder* (1926), 11 Tax C. 261, where the date to which accounts were made up had been changed.

(*dd*) Act of 1926, s. 34 (1) (a).

(*e*) Sub-s. (1) (b). It would appear that a decision of the revenue authorities selecting the account period under this provision may be questioned in an ordinary appeal against an assessment based on the period thus selected; as to appeals, see Chap. XVII.

fit, without regard to the year of assessment in which it ends, and without regard to the practice of the company in making up its accounts; but the period of twelve months must be a continuous one, and the Commissioners cannot select and add together two six-monthly periods which do not follow one upon the other.

The effect of the provisions just summarized may best be indicated by the following examples:—

(a) Year of assessment, 1929—30; trade set up before 1st January, 1928; account made up to 31st December, 1928, for the calendar year 1928; the profits or gains for the calendar year 1928 must be taken in assessing the tax for the year of assessment 1929—30.

(b) Year of assessment, 1929—30; trade set up before 1st October, 1927; half-yearly accounts made up to 31st March, 1928, and 30th September, 1928, 31st March, 1929, and so on; the Inland Revenue are to decide what period of twelve months they will take in assessing the tax for the year of assessment 1929—30.

Any division or apportionment of profits or losses to specific periods, and any aggregation of profits or losses, may be made which is rendered necessary by these provisions for the purposes of Case I. or Case II. of Schedule D (*f*).

Retrospective Assessments and Repayments: Appeal.

The discretion given to the Commissioners of Inland Revenue with regard to selecting twelve-monthly periods, to which reference has just been made, is followed by a provision (*g*) giving them power to make that selection retrospective by adopting a corresponding period for computing the tax of a year of assessment earlier than that to which their first selection applied, *e.g.*, if for the year of assessment 1929—30 they decide under sect. 34 (1) to compute the tax on the profits for twelve months ending 30th September, 1928, they may afterwards direct that the tax for the year of assessment 1928—9 shall be computed on the profits for

(*f*) Act of 1926, s. 35, *infra*, p. 585. (*g*) Sect. 34 (2).

twelve months ending 30th September, 1927. The assessment for 1928—9, if not yet made, will be made according to this direction; if an assessment has already been made, and the result of the direction is that the taxpayer is liable to pay more tax for that year, an additional assessment is to be made (*h*); if the result is that he has paid too much, repayment is to be made.

This sub-section gives no power to reopen an assessment for any year of assessment earlier than 1927—8 (*i*).

A specific right of appeal to the General or Special Commissioners—at the option of the taxpayer—is given against such an assessment or additional assessment, or against the refusal to make such a repayment or to make a sufficient repayment (*j*); this appears to involve the power of appealing against a refusal of the Commissioners of Inland Revenue to give such directions under sub-sect. (2) as may be necessary to ensure the taxpayer getting the necessary repayment, so that he shall not have borne tax on the profits of overlapping periods.

Trades and Professions Recently set up.

Where a trade, &c. has been commenced in the year of assessment, the assessment will be upon the amount of the profits made in that year, or upon an average based—it would seem—upon the profits made in some part of the year, according as the Commissioners who make the assessment, or who determine an appeal against the assessment, direct (*k*).

Where the trade has been commenced within the year preceding the year of assessment, the tax is in general to be charged on the profits or gains for one year from the date of the setting up or commencement (*l*), although a year beginning on that date may overlap some part of the year

(*h*) *Vide infra*, p. 368.

(*i*) See note (*c*), *supra*.

(*j*) Sect. 34 (3); as to appeals, see Chap. XVII.

(*k*) Act of 1918, Sched. D, Cases I. and II. r. 1 (2), as amended, *infra*, p. 498, read with Case VI. r. 2, as amended by s. 29 (2) of the Act of 1926, *infra*, p. 510.

(*l*) Cases I. and II. r. 1 (2), as amended, *infra*, p. 498.

of assessment (*l*). But if the taxpayer gives notice in writing to the surveyor within twelve months after the end of the year of assessment, he is entitled to have his assessment computed on the profits or gains of the year of assessment itself (*m*). If the assessment has already been made on the basis first stated, it will, of course, have to be amended or adjusted, and repayment made, if necessary.

The application of these provisions does not depend on the actual period for which the accounts of the trade have been made up (*n*).

Where the trade, &c. has been commenced within the period of two years before the year preceding the year of assessment (*i.e.*, in the year next but one, or next but two, before April 6th in the year of assessment) the amount of the assessment is in general to be taken as equivalent to the profits of the year next preceding the year of assessment (*o*); subject, however, to the provisions (*p*) which regulate the selection of the accounting period for computing the profits of the year last mentioned. But here, again, the taxpayer may by notice require his assessment to be computed on the profits of the year of assessment itself (*q*).

Provision is made for the setting-off of antecedent losses incurred in connection with a trade, &c. set up or commenced after 6th April, 1923 (*r*).

A change in the ownership of the trade by the formation of a partnership into a company is not the setting up or commencing of a trade, if the business is carried on as before (*s*); but it is so, if the business carried on by the com-

(*l*) The decision to the contrary in *Clare and Heyworth* v. *Betts*, [1927] A. C. 443, following *Burntisland Shipping Co.* v. *Weldhen*, [1923] S. C. 449, seems to be ineffective, now that the words "the average of" have been omitted from Rule 1 (2).

(*m*) Act of 1926, s. 29 (1), proviso (a), *infra*, p. 580.

(*n*) Sect. 34, *supra*, p. 584, does not appear to be applicable.

(*o*) Act of 1927, s. 23, *infra*, p. 589, which applies Act of 1926, s. 29 (1).

(*p*) Act of 1926, s. 34, *vide supra*, p. 161.

(*q*) Act of 1926, s. 29 (1), applied by Act of 1927, s. 23; where such a notice is given, sect. 34 of the Act of 1926 does not appear to be applicable.

(*r*) Act of 1927, s. 28, *vide infra*, p. 172.

(*s*) *Ryhope Coal Co.* v. *Foyer* (1881), 7 Q. B. D. 485, *infra*, p. 169; the words "set up and commenced," which now appear in Rule 1 (2), are to be found in the

pany is in fact different from that of the partnership (*t*). A company, which owned one ship only, lost it, and afterwards bought another out of the proceeds of the insurance, was held to have carried on one trade from beginning to end, and not to have "set up or commenced" a trade when the second ship started on her first voyage, although this took place after an interval of six-and-a-half months from the loss of the first (*u*); thus, where a company had for more than five years sought to obtain contracts for construction, but had failed to do so until new directors joined the board, and fresh capital was brought in, there was held to be no discontinuance, and no fresh setting-up, of a trade (*v*). A company, which was previously not carrying on a trade assessable under Case I. because it was not "resident" in this country (*w*), becomes liable to such an assessment if it transfers the head and seat of its direction to England; but in the year in which that transfer takes place, it is not "setting up and commencing" a trade for the purposes of Case I., if the business carried on is the same business as it was before the transfer (*x*).

Discontinuance of Trade or Profession.

Where in any year of assessment a trade, profession or vocation is permanently discontinued, the tax for that year is in every case to be assessed on the profits or gains made in that year itself (from the 6th April) down to the date of discontinuance. The computation of the profits is to be made according to ordinary income-tax principles, with the ordinary allowances for loss; but without reference to any period of account other than that just mentioned. If an assessment for the year has already been made in the

proviso to first rule of Sched. D, first case, in the Act of 1842, referred to by GROVE, J., at p. 494, and by LINDLEY, J., at p. 500. Cf. also *Bartlett* v. *I. R.*, *infra*, p. 166.

(*t*) *Alex. Ferguson & Co., Ltd.* v. *Aikin* (1898), 4 Tax C. 36, *infra*, p. 166.

(*u*) *Merchiston S.S. Co., Ltd.* v. *Turner*, [1910] 2 K. B. 923; an assessment based on the accounts of the first ship only was held to be incorrect.

(*v*) *Kirk and Randall, Ltd.* v. *Dunn* (1924), 8 Tax C. 663.

(*w*) *Vide supra*, pp. 90—102.

(*x*) *Fry* v. *Burma Corporation, Ltd.* (1929), June 24 (C. A.), not reported; an appeal is understood to be pending.

ordinary way (without knowledge or regard of the discontinuance), it is to be corrected by additional assessment or repayment, as the case may be (*y*).

Moreover, the assessment for the year of assessment preceding that in which the trade, &c. is discontinued will be reopened (*z*) if it is found that the profits of the preceding year were more than those on which the assessment for that preceding year was made according to the method above described (*a*). In such a case an additional assessment may be made for the preceding year so as to bring the amount on which the tax is charged up to the profits of that actual year (6th April to 5th April). But here again, the taxpayer is to have the benefit of any allowance for loss due to him for that preceding year (*b*). The provisions with regard to account periods contained in sect. 34, and considered above, do not apply in ascertaining the profits of the actual year.

It may be noted that there is no corresponding relief given to the taxpayer in the case where the tax for the year of assessment preceding that in which the trade, &c. has been discontinued has been calculated on an amount *greater* than the profits of that year (*c*).

The sale of a business by a firm to a company is not a discontinuance, if the same business is carried on after the transfer (*d*); and if the company attempts to obtain contracts for work similar to that done by the firm, but fails to do so, such failure does not constitute a discontinuance of the business (*e*). A particular portion of the trade may be given up (as where a railway company ceases to run steamers of its

(*y*) Act of 1926, s. 31 (1) (a), *infra*, p. 582; Sched. D, Cases I. and II. r. 8, and Misc. Rules, r. 3, are repealed by that Act: see sect. 37 and 5th Sched. As to allowances for loss, see p. 172, *infra*.

(*z*) Act of 1926, s. 31 (1) (b).

(*a*) *Supra*, pp. 161, 162. (*b*) *Vide infra*, p. 172.

(*c*) Rule 8 of Cases I. and II. having been repealed, see note (*y*), *supra*.

(*d*) *Bartlett* v. *I. R.*, [1914] 3 K. B. 686, *infra*, p. 169. Cf. *Ryhope Coal Co.* v. *Foyer*, *supra*, p. 164. It is often a question of fact whether the business carried on after the transfer is the same business or not: *Alex. Ferguson & Co., Ltd.* v. *Aikin* (1898), 4 Tax C. 36, *infra*, p. 169; but the question may be treated as one of law: *Kirk and Randall, Ltd.* v. *Dunn* (1924), 8 Tax C. 663; and see *Bell* v. *National Provincial Bank*, *infra*, p. 169.

(*e*) *Kirk and Randall, Ltd.* v. *Dunn*, *supra*.

own), but it does not necessarily follow that the trade has itself been discontinued (*f*).

Succession to Trade or Profession: Change in Partnership.

If, after 5th April, 1928, a change occurs in a partnership (by retirement, death or dissolution of partnership), which does not involve the disappearance of all the old partners, or if after that date a person who previously carried on the trade, &c. on his own account takes in a partner or partners, the assessment is, in general, to be made as if no such change had taken place (*g*). But if notice is given for the purpose, the taxpayer may have the case treated as if the old trade, &c. had been discontinued, and a new one had been set up or commenced at the date of the change. The notice must be signed by all the outgoing and incoming partners, or, if any has died, by his legal representatives, and must be sent to the surveyor within three months after the change took place. Such a notice will apply to all the years of assessment affected; and the partners who carried on the trade, &c. before the change (including the legal representatives of any deceased) and those who carry it on after the change, will be respectively liable for the tax assessed in respect of the periods before, and after, the change (*h*).

On the other hand, where there is a succession by one individual to another, by one partnership to another, by a partnership to an individual, or by an individual to a partnership, so that no individual who was carrying on the trade, &c. before the change, continues to do so after the change; or, again, where a company succeeds an individual or partnership (or *vice versâ*), the change will be treated as a discontinuance and a fresh commencement (*i*), with the same

(*f*) See *Highland Rail. Co.* v. *Special Commrs.* (1885), 2 Tax C. 151, *supra*, p. 159, and *Stockham* v. *Wallasey U. D. C.*, *infra*, p. 170.

(*g*) Sched. D, Cases I. and II., sub-rule (1) of Rule 11, *infra*, p. 504, as substituted by Act of 1926, s. 32 (1).

(*h*) Sub-rule (1), proviso; as to the effect of discontinuance, and of setting up a new trade, see pp. 163, 165, *supra*.

(*i*) Sub-rule (2); see preceding note. "Person" in sub-rule (2) is expressly stated to include a "partnership," and the word, of course, includes a company or

results with regard to assessment and charge as where a notice is given under the proviso to sub-rule (1).

Under the substituted Rule 11, therefore, the trade, &c. is to be treated as continuous only where the personnel of the owners is to some extent the same, and even, where this is so, the old and the new owners may, by giving notice under the proviso to sub-rule (1), unite to secure a break in the computation; and there is no necessity to prove any falling-off in the profits or to attribute it to a specific cause (*j*). It is only in a case of change of partnership, where no such notice has been given, that the procedure for adjustment of an assessment already made, so that the members of the old and the new partnership may each bear their respective shares (*k*), seems to remain applicable: where such a notice has been given, and where there is a succession within sub-rule (2), the liability, as has been seen, is distributed, and is imposed on the outgoing and incoming owners respectively.

The date on which an agreement of dissolution, &c. is entered into may be in fact the date of the change of partnership or of the succession, although the agreement declares that the partnership shall stand dissolved as from an earlier date (*l*).

The question whether a succession has taken place within the meaning of Rule 11 (2) may be one of pure fact; and the Scottish Court refused to review the decision of Commissioners, where they had found that a company carrying on the business of distilling and blending whisky, which had acquired the business of an older company including a distillery (which the older company had

other corporation: see pp. 169, 170. As to losses on succession by a company, see Act of 1927, s. 29, *infra*, p. 592.

(*j*) The effect of the old Rule 11 is considered in the 3rd edition of this book at pp. 182—5. In sect. 32 (2) of the Act of 1926, *infra*, p. 583, there is a provision for continuing in 1927—8 relief based on a "specific cause."

(*k*) Sched. D, Cases I. and II. r. 9, *infra*, p. 503; see also Act of 1926, s. 35 (1), proviso. This procedure is set in motion by the inspector of taxes within four months after the end of the year of assessment in which the change took place. As to assessments on partnerships generally, see p. 267, *infra*.

(*l*) *Faraday* v. *Carter* (1927), 11 Tax C. 565.

ceased to work), and had recommenced the working of that distillery, was not carrying on a business identical with that of the older company, and that therefore there had been no succession (*m*); and again, where the Commissioners came to the conclusion that there had been a succession to a joinery business by a firm of saw-millers, who had bought the premises and the goodwill of the joinery business, although it had ceased for lack of orders before the purchase (*n*). On the other hand, a large banking company which had acquired the business of a local bank and made it a branch of its own wide-spreading business was held, by the English Court, as a matter of law to have succeeded to the business of the local bank, and to be bound to include the profits of the local bank in computing its own profits for the material year (*o*). A company acquiring the business of a partnership and carrying it on succeeds to that business (*p*). But the mere sale of a ship by one set of owners to another, unaccompanied by any transfer of debts, account books or lists of customers, does not make the purchasers succeed to the business of the sellers (*q*). The Court (in England) refused to interfere with the decision of Commissioners who found that a succession had taken place where one brewery company had acquired the brewery and the tied houses of another, and carried on the tied houses, but had closed the brewery (*r*).

There can be no succession to a part of a concern; but if one person carries on two separate businesses, another

(*m*) *A. Ferguson & Co., Ltd.* v. *Aikin* (1898), 4 Tax C. 36, *supra*, p. 165; *Fullwood Foundry Co.* v. *I. R.* (1924), 9 Tax C. 101; cf. the English case of *Wilson and Barlow* v. *Chibbett* (1929), 8 A. T. C. 174. Contrast *Faraday* v. *Carter, supra.* The cases cited arose under the old Rule 11 or under the corresponding 4th rule of Cases I. and II. in the Act of 1842.

(*n*) *Thomson and Balfour* v. *Le Page,* [1924] S. C. 27.

(*o*) *Bell* v. *National Provincial Bank of England, Ltd.*, [1904] 1 K. B. 149.

(*p*) *Ryhope Coal Co.* v. *Foyer* (1881), 7 Q. B. D. 485, *supra,* p. 164; *Kirk and Randall, Ltd.* v. *Dunn* (1924), 8 Tax C. 663, *supra,* p. 166. Cf. *Bartlett* v. *I. R.*, [1914] 3 K. B. 686, *infra,* p. 313.

(*q*) *Watson Bros.* v. *Lothian* (1902), 4 F. 795; 4 Tax C. 441; as to single ship companies, see also *Farrell* v. *Sunderland S.S. Co., Ltd.* (1903), 4 Tax C. 605, *supra,* p. 88, and *Merchiston S.S. Co., Ltd.* v. *Turner,* [1910] 2 K. B. 923; *supra,* p. 165.

(*r*) *Shipstone & Sons, Ltd.* v. *Morris* (1929), 8 A. T. C. 256.

person may succeed to one of those businesses, although he does not acquire the other; and a local authority, which acquired a tramway undertaking from a united tramway and omnibus company, was held to be the successor of the company as to the tramway undertaking, although it had not acquired the company's omnibus concern, and although it had converted the tramways from horse to electric traction and had greatly extended them (*s*).

Loss.

Where a person sustains a loss in any trade or profession he may, if he has paid the tax, apply for an adjustment of his liability and obtain a certificate for repayment of the tax upon income equal to the amount of loss. The application must be made within one year after the year of assessment either to the General or Special Commissioners by notice in writing given to the surveyor (*t*). The trade as a whole must have resulted in a loss; repayment cannot be claimed because a loss was made on a particular transaction (*u*).

Loss in one Trade set off against Profit in another.

Where a person (*x*) carries on (solely or in partnership) different trades in different places, a separate assessment is made in respect of each trade (*y*). But if a loss is made in one trade, it may be deducted or set off against the profits made in a distinct trade (*z*). The right to set off a loss

(*s*) *Stockham* v. *Wallasey U. D. C.* (1907), 71 J. P. 244, *supra*, p. 167.

(*t*) Act of 1918, s. 34, as amended by Act of 1923, s. 30 (3), *infra*, pp. 416, 567. As to the procedure, *vide infra*, p. 389. The Commissioners' decision is final: *R.* v. *Swansea Commissioners, Ex parte English Crown Spelter Co., Ltd.*, [1925] 2 K. B. 250.

(*u*) *R.* v. *City of London Commissioners* (1904), 91 L. T. 94. A particular loss of that kind should be taken into account in arriving at the assessment in the first instance, see *e.g.*, *Reid's Brewery Co.* v. *Male*, [1891] 2 Q. B. 1, *supra*, p. 133.

(*x*) Including "body of persons," General Rules, r. 1, *infra*, p. 517; sect. 237, *infra*, p. 471.

(*y*) Sched. D, Cases I. and II. r. 16, proviso, *infra*, p. 506.

(*z*) Rule 13, *infra*, p. 505; for this purpose, though the trades must be distinct, they need not be carried on at different places. This rule corresponds with the first part of sect. 101 of the Act of 1842, but the language is shorter. The

depends upon both trades being carried on for commercial purposes and on commercial principles, and with a view to profit (*a*). Thus, a municipal corporation cannot set off the expense of such services as the disposal of sewage, industrial schools, baths or parks against the profits derived from markets (*b*) or from trading undertakings, such as tramways or electric light. A society for the diffusion of religious literature cannot deduct from the profits of bookseller's shops the balance of expenses over receipts of a colportage agency, one of whose objects is to administer spiritual advice (*a*); and a society for the improvement of young men cannot deduct from the profits of a restaurant a debit balance incurred in respect of educational classes, a gymnasium, or a publication department (*c*).

The loss which it is desired to set off must have been incurred in carrying on a trade the profits of which are charged under Schedule D; and a seed merchant was not allowed to set off against the profits of the seed business the loss incurred on a farm, because he was chargeable in respect of the farm under Schedule B (*d*). A commercial traveller was not allowed to deduct from his profits, as such, expenses incurred in regard to an invention which had no connection with the trade in which he was a traveller (*e*).

A claim for a set-off of this kind must be made in connection with the assessment, by appeal or otherwise; it is not a matter for subsequent application and adjustment as in cases of succession, &c.

There appears to be nothing now to prevent the allowance of a set-off as between two concerns formerly assessable under No. III. of Schedule A., provided that both

question whether two sets of operations form distinct trades has been considered *supra*, pp. 87—89; see also pp. 169, 170.

(*a*) *Religious Tract and Book Society* v. *Forbes* (1896), 23 R. 390; 3 Tax C. 415, *supra*, p. 79.

(*b*) *In re Birmingham Corpn.* (1875), 1 Tax. C. 26, *supra*, p. 157.

(*c*) *Grove* v. *Y. M. C. A.* (1903), 4 Tax C. 613; *supra*, p. 83.

(*d*) *Brown* v. *Watt* (1886), 23 S. L. R. 403; 2 Tax C. 143. If he had elected to be charged under Sched. D in respect of the farm (*vide supra*, p. 70), the decision might perhaps have been different.

(*e*) *Grimes* v. *Lethem* (1898), 3 Tax C. 622.

are carried on upon commercial principles with a view to profit (*f*).

Losses Carried Forward.

In addition to the above, there are new provisions enabling a person who, in a trade, &c., has sustained a loss (computed as the profits are computed for income tax purposes), for which relief has not been wholly given under sect. 34 or Rule 13 (*g*), or any other provision of the Acts, to claim that the balance of the loss shall be carried forward and deducted from the profits of that trade in the next year of assessment; if the loss cannot be wholly wiped off in the next year, then the balance is to be deducted in the year following, and so on up to the sixth year of assessment following that in which the loss occurred (*h*). This section does not enable antecedent losses on a different trade to be set off; the balance of the loss deductible in succeeding years can only be deducted against the profits of the same trade in which the loss is incurred (*i*). A partner in a partnership is to set off his loss, or his share of the loss, against his portion of the profits computed according to the provisions which regulate his share for purposes of "total income," which is not necessarily the share of the profits actually drawn by him in any year (*k*).

Annual payments, not wholly made out of profits or gains, which a person carrying on a trade has made under deduction of tax, and for which he is separately assessed (*l*), may

(*f*) The decision to the contrary in *Wakefield R. D. C.* v. *Hall*, [1912] 3 K. B. 328, which was given not only before the transfer of these concerns to Sched. D, but also before the passing of the Act of 1918, was based mainly on the fact that sect. 101 of the Act of 1842 was not a "rule" made applicable to assessment under No. III. of Sched. A.

(*g*) In the Act of 1918, *supra*, pp. 170—172.

(*h*) Act of 1926, s. 33 (1), (3), *infra*, p. 583. This provision was rendered necessary when the method of averaging profits was abolished by that Act, for while it prevailed, losses in the years of average were automatically deducted. Transitory provisions for carrying forward losses incurred before the abolition are contained in sect. 33 (5), and in Act of 1927, s. 28, *infra*, p. 590.

(*i*) Sect. 33 (1).

(*k*) Sect. 33 (2); as regards a partner's total income, see Chap. XIII. and p. 313, *infra*.

(*l*) Under General Rule 21 as amended, *vide infra*, p. 193.

be carried forward as losses under sect. 33 of the Act of 1926, provided that the person assessed is not reimbursed for that annual payment, and that it is not "charged to capital" (*m*).

The provisions of sect. 33 of the Act of 1926 are applied (with certain modifications) to cases where a business carried on by an individual or a partnership is transferred to a company in consideration solely or mainly of the allotment of shares (*n*).

(*m*) Act of 1928, s. 19, *infra*, p. 612. The phrase quoted is novel, and would seem to make a book entry conclusive; contrast p. 127, note (*c*). Sect. 19 does not apply to copyright royalties dealt with by sect. 25 of the Act of 1927; see p. 206.

(*n*) Act of 1927, s. 29, *infra*, p. 592.

CHAPTER VII.

INTEREST, ANNUITIES, DISCOUNTS, ETC.; SCHEDULE D, CASE III.

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Scope of Case III.

"ALL interest of money, annuities and other annual profits or gains not charged under Schedule A, B, C, or E" (and not specially exempted from tax) (*a*), are charged under Schedule D (*b*). Case III. is described as embracing "profits of an uncertain value," and "other income described in the rules applicable to this case"; but the description is misleading, for those rules extend the tax to six classes of annual payments of the nature of interest, annuities, discounts and so forth (*c*); to the income of investments of foreign life assurance companies (*d*); and to certain profits of cattle and milk dealers (*e*).

(*a*) Exemptions in favour of charitable and other bodies (including the exemption in respect of income and other deposits of a superannuation fund) are considered in Chap. XIII.

(*b*) Sched. D, 2, *infra*, p. 498.

(*c*) Sched. D, rules applicable to Case III. r. 1, *infra*, p. 506.

(*d*) Rule 3, *infra*, p. 507.

(*e*) Rule 4; the effect of this rule is dealt with in Chap. III. at p. 67. Where it applies, those profits are chargeable according to the figures of the preceding year, instead of on annual value; hence the inclusion of the rule in Case III.

Moreover, Case III. has recently been enlarged by the transfer (*f*) of those miscellaneous profits derived from lands or other hereditaments which were formerly assessed under No. II. of Schedule A (*g*), namely:—

1. Tithes taken in kind;

2. Dues, &c. in right of the church or by endowment, or in lieu of tithes (not being tithes arising from lands), and teinds in Scotland;

3. Tithes compounded for, and all rents and money payments in lieu of tithes arising from lands, other than tithe commutation rentcharges confirmed under the Tithe Act, 1836;

5. Profits of manors and other royalties, including all dues and services or other casual profits (not being rents or other annual payments reserved or charged) (*h*);

6. Fines received in consideration of any demise of lands or tenements (not being parcel of a manor or royalty demisable by the custom thereof) (*i*);

7. Profits other than the above (and not payable under deduction of tax under No. VIII. of Schedule A (*k*)), arising from lands, &c. not in the actual possession or occupation of the person to be charged, *e.g.*, a dead-rent payable in respect of coal comprised in a mining lease, but not yet won (*l*).

In view of the wide variety of the sources of income embraced by Case III., it can best be considered in relation to each particular rule. But it may here be pointed out that interest payable out of public revenues in the United

(*f*) Act of 1926, s. 28 and 3rd Sched., *infra*, pp. 579, 587.

(*g*) *Infra*, p. 474; the numbers used in the text are those of the relevant rules of No. II. As to tithe rentcharge under the Tithe Act, 1836, *vide supra*, p. 62.

(*h*) See, however, Law of Property Act, 1922 (12 & 13 Geo. 5, c. 16), ss. 128, 138.

(*i*) The proviso to Rule 6 affecting the computation of profits is preserved, *vide infra*, p. 216. See Law of Property Act, 1922, 15th Sched. art. 7.

(*k*) *Vide supra*, pp. 55—62. Tax is (speaking generally) not deductible under No. VIII. unless it has been paid in the first instance by an occupier of land.

(*l*) *Hill* v. *Gregory*, [1912] 2 K. B. 61, *infra*, p. 217; no other case is reported in which this rule has been held appropriate. It does not apply to the receipts of a cemetery company: *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1887), 17 R. 154; 2 Tax C. 516, *supra*, p. 160. As to expenses of management, see Act of 1922, s. 26, *infra*, p. 262.

Kingdom is (generally) charged under Schedule C (*m*) and not under Schedule D; and that annuities in the nature of pensions are not charged under Case III. of Schedule D, unless payable out of the funds of any institution in India (*n*).

Income from securities, stocks and shares in any place out of the United Kingdom is charged under Cases IV. and V., and not under Case III. (*o*).

Further, the tax chargeable under Case III. is, speaking generally, paid by deduction "at the source" and not by direct assessment (*p*). The rules, therefore, which give the payer of interest, &c. the right, and impose on him the obligation, to deduct tax in making the payments due from him, have an important bearing on those of Case III. (*q*). Where the payer is entitled to deduct tax, and fails to do so previous to the passing of the Income Tax Act for the year of assessment, the payee is liable to direct assessment under Case VI. on the profits of the year (*r*).

Basis of Assessment: Sources of Income Acquired or Discontinued.

Where the tax in respect of any of the sources of income charged under Case III. cannot by law be deducted at the source, and is directly assessed (a return having to be made for that purpose) (*s*), the tax is in general computed on the profits of the preceding assessment year (*t*). But in the first and second years in which those profits arise, the tax must be computed on the profits of the first or second year as the case may be; unless the profits first arose on the

(*m*) See Chap. V.

(*n*) *Vide infra*, p. 188; annuities in the nature of pensions are in general charged under Sched. E; see Chap. X.

(*o*) See Chap. VIII.

(*p*) Cf. *Purdie* v. *Rex*, [1914] 3 K. B. 112, and the remarks thereon in *Brooke* v. *Inland Revenue*, [1917] 1 K. B. 61; [1918] 1 K. B. 257, *infra*, p. 339.

(*q*) *Vide infra*, pp. 182 *sqq*.

(*r*) *Vide infra*, p. 240.

(*s*) *Vide infra*, p. 347.

(*t*) Sched. D, Case III. r. 2, as substituted by Finance Act, 1922, s. 17; see para. (1) (b), *infra*, p. 507. The phrase "profits or income" seems to have been suggested by the words describing Case III. in Rule 2 of Sched. D, *supra*, p. 174. The assessment year begins on 6th April, *vide supra*, p. 5.

6th April of the first year, in which case the tax for the second year is computed on the profits of the first year, but the person charged is entitled (on giving notice) to be charged on the profits of the second year (*u*). Even in the third year (if the first year was a broken year), he is similarly entitled to be charged on the profits of the third year (*x*).

If a person receives income from more than one of the sources grouped under Rule 1 (which includes interest of various kinds, interest on War Loan, &c. paid without deduction of tax, and profits on discounts), the whole of such income may be charged in one sum (*y*). But if in any year of assessment (*z*) he ceases to possess any source of such income (or part of any source), the income from that source is to be computed separately upon the actual receipts in that year down to the date when he ceases to possess the source or part (*a*). If, on the other hand, he acquires a new source of such income or an addition to any such source, the income from that source or addition is to be computed separately, in accordance with the provisions above summarized (*b*).

A person who possesses in a year of assessment any source of income taxable or chargeable under Case III. on the profits of the preceding year is liable to pay tax on that amount, although he derives no profits from that source during the year (*c*). This provision does not apply to any source of income chargeable under Rule 1 which a person ceases to possess during the year, because the amount is not

(*u*) Rule 2 (1) (a) read with provisos (i) and (ii); the notice must be given in writing within twelve months after the end of the year of assessment.

(*x*) Rule 2, proviso (ii); see last note.

(*y*) Act of 1926, s. 30, *infra*, p. 581. This section does not apply to the profits of dealers in cattle or milk charged by Rule 4, nor to the profits formerly grouped under No. II. of Sched. A; nor does it appear to apply to the income of foreign life assurance companies dealt with by Rule 3 of No. III.

(*z*) See note (*t*), *supra*.

(*a*) Sect. 30, proviso (i), read with sect. 31, *vide supra*, p. 166; note the provision for retrospective assessment in sect. 31 (1) (b).

(*b*) Sect. 30, proviso (ii), read with Rule 2 (1) of Case III.; the reference to an addition appears to have been introduced to meet the point afterwards decided against the Crown in *Walker* v. *Howard* (1927), 138 L. T. 367, *infra*, p. 210.

(*c*) Act of 1926, s. 22, *vide supra*, p. 5.

to be computed according to the profits of any preceding period, but according to those of the year of assessment itself (*d*). If a person has ceased to possess any source of income chargeable under Case III. before the beginning of the year of assessment, he is not liable to any tax in that year, although he derived an income from it in the preceding year (*e*).

The question what constitutes a separate source of income (which may arise under any of the above provisions) is illustrated by decisions given in regard to War Loan and Exchequer Bonds (*f*).

Interest of Money.

The tax extends under Case III. to "any interest of money whether yearly or otherwise . . . . or whether the same is received and payable half-yearly or at any shorter or more distant periods" (*g*). Other words make it immaterial whether the interest is payable in this country or not, and in what manner the liability to pay is created (*g*). The rule which gives the payer the right to deduct tax upon interest paid out of taxable profits gives that right only in respect of "yearly interest" (*h*), thus differing from the rule of Case III. just cited; but where the payment is not made wholly out of taxable profits, the right to deduct tax applies to "any interest of money," and is not restricted to "yearly interest" (*i*).

Interest, other than yearly, paid out of taxable profits, is therefore taxed by direct assessment (*k*), and not by deduction at the source. Again, if the power to deduct at

(*d*) Sect. 30, proviso (i), *supra*.

(*e*) To this extent the effect of the decisions in *Brown* v. *National Provident Institution*, [1921] 2 A. C. 222; *Grainger* v. *Maxwell*, [1926] 1 K. B. 430, *infra*, p. 210, is unaffected by the passing of sect. 22 of the Act of 1926; *vide supra*, p. 5.

(*f*) *Infra*, p. 210.

(*g*) Case III. r. 1 (a), *infra*, p. 506.

(*h*) *Vide infra*, p. 182, and General Rules, r. 19 (1), *infra*, p. 521.

(*i*) *Vide infra*, p. 193, and General Rules, r. 21, *infra*, p. 522; *Michelham* v. *Michelham*, *infra*, p. 194.

(*k*) Sched. D, Misc. Rules, r. 1, *infra*, p. 510; *Sweet* v. *Henderson* (1920), 58 S. L. R. 129; 7 Tax C. 640.

the source is not exercised, the recipient of the interest is nevertheless liable to be assessed directly (*l*).

Tax is charged under Case III. upon all interest, whether annual or not. Thus, a building society is taxable upon the interest received from its members, to whom it lends money upon security of freeholds, leaseholds, &c., even though the interest is payable weekly (*m*). So also the tax is charged on bank deposits (*a*), upon interest ordered to be paid in respect of an amount recoverable under a judgment (*b*), and upon interest ordered by a rule of Court to be paid upon an established debt (*c*). But interest included with damages in an award may be in truth a part of the damages, and, if so, is not taxable as interest (*d*).

Interest guaranteed by a foreign Government to a railway company during the period of construction of the railway is taxable as a whole, even though a part of it must be devoted by the company to the redemption of its debenture capital (*e*); interest payable during construction by contractors (*f*), or by the railway company itself (*g*) is similarly taxable.

(*l*) *Glamorgan Quarter Sessions* v. *Wilson,* [1910] 1 K. B. 725, *infra;* it was also decided in that case that Quarter Sessions as a compensation authority under the Licensing Acts are liable to assessment. On this point, see also *Matthews* v. *Cork C. C.* [1910] 2 I. R. 251; 5 Tax C. 545; and p. 120, *supra.*

(*m*) *Leeds Benefit Building Society* v. *Mallandaine,* [1897] 2 Q. B. 402; the members did not deduct tax in making their payments. The payments included instalments of principal as well as interest, but no question arose on this as it did in *Sec. of State for India* v. *Scoble, infra,* p. 191. See also *L.-A.* v. *Edinburgh Corpn.* (1903), *infra,* p. 184.

(*a*) *Glamorgan Quarter Sessions* v. *Wilson, supra; Matthews* v. *Cork C. C., supra; College of Preceptors* v. *Jenkins* (1919), 7 Tax C. 162. See *Goslings and Sharpe* v. *Blake, infra,* p. 184, as to the banker's right to deduct.

(*b*) *Schultze* v. *Bensted,* [1916] S. C. 188; 7 Tax C. 30; *Sweet* v. *Henderson, supra,* note (*k*).

(*c*) Under R. S. C., O. LV. r. 63, *Michelham* v. *Michelham,* [1921] 1 Ch. 705, *infra,* p. 194.

(*d*) *I. R.* v. *Ballantine* (1924), 8 Tax C. 595. Cf. *Simpson* v. *Maurice's Exors.* (1929), 45 T. L. R. 581.

(*e*) *Blake* v. *Imperial Brazilian Railway* (1884), 2 Tax C. 58; *Nizam State Rail. Co.* v. *Wyatt* (1890), 24 Q. B. D. 548; in the latter case the annual payment was called an "annuity." See also *Sec. of State* v. *Scoble, infra,* p. 191. A peculiar case relating to arrears of guaranteed interest will be found in *Pretoria-Pietersburg Rail. Co.* v. *Elwood* (1908), 6 Tax C. 508, *supra,* p. 125.

(*f*) *City of London Contract Corpn.* v. *Styles* (1887), 2 Tax C. 239, *supra,* p. 130; *Surbiton U. D. C.* v. *Callender Cable Co., infra,* p. 184.

(*g*) *L.-A.* v. *Forth Bridge Rail. Co.* (1890), 28 S. L. R. 576; 3 Tax C. 1; *vide infra,* p. 194.

It has already been seen (*h*) that in the case of a company whose business is bound up with the holding of investments (such as an insurance office, or an investment corporation), the Crown has an option either to tax the company on its profits under Case I., or on the income derived from its investments under Case III., Case IV., or Case V.; the Crown naturally levies the tax according to that method which yields the larger amount. It is entitled to levy the tax on any interest received by such a company, where tax on that interest has not been deducted by the payer (*i*). A county council is under a similar liability to pay tax on interest received from other local authorities to which it has made loans, although those loans are made out of money which the county council has itself borrowed and upon which it has to pay interest (*j*).

Interest payable out of local rates is taxable (*k*); and a local authority is liable to pay tax on the interest paid upon a loan raised upon the security of its rates for the purpose of erecting municipal buildings, in spite of the fact that it pays tax under Schedule A (*l*) on the annual value of the buildings (*m*).

Interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, shares or securities of any foreign or Colonial company, society, adventure or concern, and entrusted to a person in the United Kingdom for payment to another person in this country, are charged by the Special Commissioners in the hands of the person who makes the payments. But if any portion of the in-

(*h*) *Vide supra*, pp. 111, 112.

(*i*) *Clerical, Medical and General, &c.* v. *Carter* (1889), 22 Q. B. D. 444; *Revell* v. *Edinburgh Life, &c.* (1906), 5 Tax C. 221, *supra*, p. 112.

(*j*) *London County Council* v. *Grove* (1896), 3 Tax C. 508. See also *L. C. C.* v. *A.-G.*, [1901] A. C. 26; *A.-G.* v. *L. C. C.*, [1907] A. C. 131, *infra*, p. 197.

(*k*) Sched. D, Misc. Rules, r. 6, *infra*, p. 511; there is nothing elsewhere in the Act to suggest that interest, in order to be taxable, must be paid out of profits; the only practical effect of this rule is therefore to make the officer of the paying authority liable in the first instance. There is nothing to prevent the authority deducting the tax against the recipient of the interest, *vide infra*.

(*l*) *Vide supra*, p. 38.

(*m*) *Aberdeen Commrs. of Supply* v. *Russell* (1890), 17 R. 942; 2 Tax C. 643; see *A.-G.* v. *L. C. C.*, [1907] A. C. 131, *infra*, p. 198.

terest, dividends, &c. is paid out of profits already taxed in this country (as where the company carries on business in the United Kingdom), that portion must be deducted in computing the amount of the charge, otherwise it would be taxed twice over (*n*). The agent pays the tax, and deducts it in paying the interest, &c.; but if the owner, who is entitled to the interest, is not resident in the United Kingdom, the tax will be allowed or repaid to him (*o*). If the securities or the stocks or shares are "in any place out of the United Kingdom," the charge will be made under Case IV. or Case V., whichever is applicable (*oo*). Where income formerly chargeable under either of those Cases becomes payable through an agent in this country, the income for the year of assessment up to the date of the change is to be charged under the relevant Case for the profits from 6th April to that date; the income for the remainder of the year being taxed by deduction under Rule 7 (*p*). Where income ceases to be payable in this country, and becomes chargeable under Case IV. or Case V., the converse arrangement is made (*q*).

Interest on unpaid estate duty cannot, even if paid out of interest which has not yet borne tax, be deducted in arriving at the amount of interest assessable (*r*); nor is a lunacy percentage deductible (*rr*).

(*n*) *Gilbertson* v. *Fergusson* (1881), 7 Q. B. D. 562.

(*o*) Sched. D, Misc. Rules, r. 7, *infra*, p. 512, read with the second set of rules in Sched. C, *infra*, p. 497; see Chap. IV. An appeal on the question of residence is given by Act of 1924, s. 27, see sub-s. (3) (c) (ii), *infra*, p. 569. If the securities, &c. are vested in an administrator or custodian of enemy property, such vesting is to be disregarded for the purpose of the allowance, Act of 1925, s. 20, *infra*, p. 574.

(*oo*) See Chap. VIII.

(*p*) Act of 1926, s. 30, proviso (iii), read with proviso (i) and with sect. 31 (1) (a), *infra*, pp. 581, 582.

(*q*) *Ibid.* s. 30, proviso (iv), read with proviso (iii) and with sect. 30 (1), proviso (b).

(*r*) *Inverclyde's* (*Lord*) *Trees.* v. *Millar*, [1924] A. C. 580. Contrast *Monks* v. *Fox's Exors.*, *infra*, p. 211.

(*rr*) *Committee of A. B.* v. *Simpson* (1928), Rating and Income Tax Newsp., June 23.

Yearly Interest paid out of Taxable Profits: Deduction of Tax.

In computing the profits of a trade or profession, a deduction for any annual interest, annuity or other annual payment payable out of profits, is prohibited (*s*); there is a similar prohibition with regard to profits generally (*ss*). But where yearly interest is paid wholly out of taxable profits (either as a charge or reservation imposed by deed or will or otherwise, or as a personal debt or contractual obligation), the payer is entitled to deduct the tax on the interest in making the payment, and to retain the tax for his own benefit, because he has already been assessed upon the profits out of which the payment is made; no separate assessment is made upon the payee in respect of the interest. The interest as between payer and payee is treated as having been paid in full (*t*). The amount to be deducted is calculated at the standard rate for the year in which the interest payable becomes due (*tt*). Any agreement for payment in full without allowing such deduction is void (*u*).

The right to deduct tax on interest paid out of taxable profits applies to yearly interest only; though all interest is chargeable to income tax, interest for shorter periods than a year is assessable only in the hands of the payee (*v*);

(*s*) Sched. D, Cases I. and II. r. 3 (1), *supra*, p. 134. This rule now applies to the computation of profits of mines, quarries, and other concerns formerly assessable under No. III. of Sched. A, *supra*, p. 153; but Rule 5 of No. III., *infra*, p. 475, which has a similar effect, is also preserved by sect. 28 and 3rd Sched. of the Act of 1926.

(*ss*) Expressed in slightly different language, General Rules, r. 19 (1), *infra*, p. 521; an "annual payment" in this rule and r. 3 (1), *supra*, need not be *ejusdem generis* with interest. Cf. *R.* v. *Special Commrs., Ex parte Shaftesbury Homes*, [1923] 1 K. B. 393, *infra*, p. 291.

(*t*) General Rules, r. 19 (1), *supra;* this rule corresponds with sect. 40 of the Income Tax Act, 1853; Rule 5 of No. III. of Sched. A (see note (*s*), *supra*), authorises a similar deduction of tax. As to deduction of tax on payment of interest out of untaxed profits, *vide infra*, p. 193; on payment of rent, *vide supra*, p. 55. Tender of mortgage interest less income tax is proper legal tender: *Graham* v. *Seal* (1919), 88 L. J. Ch. 31.

(*tt*) Act of 1927, s. 39 (1), *infra*, p. 599; as to the "standard rate," see p. 2, *supra*.

(*u*) General Rules, r. 23 (2), *infra*, p. 523; *vide supra*, p. 58.

(*v*) *Leeds, &c. Building Soc.* v. *Mallandaine, supra*, p. 179.

but it makes no difference whether the yearly interest is payable half-yearly or at any shorter or more distant periods (*w*).

"Yearly interest" means interest which may become payable at a future date, and is calculable by periods of not less than a year, even though the obligation to pay it may cease before the year is out (*x*). Tax is, therefore, deductible on paying interest on the purchase-money of real estate after the date fixed for completion (*y*), and on paying interest due under a mortgage-deed, and the interest due on arrears of such interest, where these are specified in the deed (*z*), as well as on paying compound interest due under a mortgage, where the deed provides in general language for payment of compound interest with yearly rests (*a*); and where interest is charged against a landowner by a firm of solicitors in Scotland, who act as his law agents, and who satisfy advances made to him out of the income and capital moneys which they collect on his behalf, the transactions extending over a series of years, but the amount of the advances as well as the rate of interest fluctuating from time to time, the interest charged is nevertheless yearly interest and tax is rightly deducted (*b*).

On the other hand, interest upon short loans by bankers to customers for periods less than a year (*e.g.*, for three months) which are not intended to be continued for a long period, is not yearly interest within this rule; the bank's customers cannot deduct tax in paying the interest, and the interest is included in the profits of the bank on which

(*w*) Rule 19 (1).

(*x*) *In re Craven*, [1907] 2 Ch. 448, per WARRINGTON, J., at p. 457; see decisions on similar points with regard to annuities and other annual payments, *infra*, p. 188. The features which differentiate yearly from other interest are indicated by Lord ANDERSON in *I. R.* v. *Hay* (1924), S. L. T. 470; 8 Tax C. 636.

(*y*) *Bebb* v. *Bunny* (1854), 1 K. & J. 216.

(*z*) *In re Craven, supra;* but no deduction is allowable in respect of repayments of principal: *Ex parte Wythes* (1885), 53 L. T. 492. Deduction may be made on payment of arrears: *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100; *infra*, p. 201.

(*a*) *In re Morris*, [1922] 1 Ch. 126.

(*b*) *I. R.* v. *Hay, supra.*

it is liable to pay tax (*c*). Where the borrower, however, has mortgaged a certain security with his banker for a fixed sum, he may deduct the tax on paying interest (*d*); for here the loan is intended to continue, and the interest is not only calculable by the year, but is likely to remain payable after the year is over. There is nothing intended to be permanent about a judgment debt, and in paying interest on that, the tax is not deductible (*e*); nor in paying interest on paving expenses under the Public Health Acts (*f*). Interest allowed by a bank to a customer upon his fluctuating daily balances is not "yearly interest" (*g*).

Tax is deductible against payments of interest by contractors during construction of works (*h*).

According to the practice of the Court of Chancery, the deduction was not allowed in respect of interest on purchase-money paid into Court (*i*); but was allowed on the payment of interest on a bill of exchange in an administration action (*j*). The Scottish Courts have refused to allow any deduction of tax on interest due under a decree of reduction of a sale of shares in a company (*k*).

Tax cannot be deducted in paying interest on unpaid estate duty (*l*).

(*c*) *Goslings and Sharpe* v. *Blake* (1889), 23 Q. B. D. 324; the case is different where the interest on short loans is not wholly payable out of taxed profits: *L.-A.* v. *Edinburgh Corpn.* (1903), 6 F. 1, *infra*, p. 194.

(*d*) *Mosse* v. *Salt* (1862), 32 L. J. Ch. 756.

(*e*) *In re Cooper*, [1911] 2 K. B. 550; such interest is, however, subject to direct assessment, *vide supra*, p. 179.

(*f*) *Mayor, &c. of Gateshead* v. *Lumsden*, [1914] 2 K. B. 883.

(*g*) *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 381; *vide supra*, p. 182; Rule 19 (1) and the provisions for deduction of tax were not in question in that case.

(*h*) *Surbiton U. D. C.* v. *Callender Cable Co.* (1910), 8 L. G. R. 244, *supra*, p. 179.

(*i*) *Holroyd* v. *Wyatt* (1847), 1 De G. & S. 125; *Dawson* v. *Dawson* (1847), 11 Jur. 984; *Humble* v. *Humble* (1849), 12 Beav. 43.

(*j*) *Dinning* v. *Henderson* (1850), 3 De G. & S. 702.

(*k*) *Dunn* v. *Chambers* (1898), 25 R. 688.

(*l*) Finance Act, 1896, 59 & 60 Vict. c. 28, s. 18 (1); *Inverclyde's (Lord) Trees.* v. *Millar*, [1924] A. C. 580.

Interest on Advances by Banks, Stockbrokers and Discount Houses.

Where interest is payable in the United Kingdom on an advance made by a bank carrying on a *bonâ fide* banking business in this country, and the interest is paid "out of profits or gains brought into charge" (*m*), but the person who has paid the interest has done so without deduction of tax, he is entitled to repayment of the tax upon the interest so paid (*n*). This provision, while it applies in the more common cases where interest on advances made by banks (such as "short loans" and "overdrafts") is not yearly interest and no deduction is admissible (*o*), applies also even if the interest is yearly interest, so that the payer might have deducted tax although he has not in fact done so (*p*). But if the interest has in fact been debited as an expense before arriving at the profits of a trade, &c. on which the payer is assessed, he cannot claim repayment under this provision (*q*); it does not, however, appear necessary that the interest should have been included in the returns of the payee (*r*). The repayment must be claimed, within six years after the end of the year to which it refers (*rr*) in the prescribed form; an appeal lies to the Special Commissioners (*s*).

Where interest other than yearly interest (*t*) is paid in the United Kingdom on an advance made by a person *bonâ*

(*m*) This expression includes every kind of taxable income: *London County Council* v. *A.-G.*, [1901] A. C. 26, *infra*, p. 197.

(*n*) Act of 1918, s. 36 (1), *infra*, p. 417; the scope of this section is discussed in *I. R.* v. *Hay* (1924), S. L. T. 470; 8 Tax C. 636, *supra*, p. 183.

(*o*) See *Goslings and Sharpe* v. *Blake*, *supra*, p. 184.

(*p*) See *Mosse* v. *Salt*, *supra*, p. 184; the words "not being yearly interest" in sub-sect. (2) do not appear in sub-sect. (1); and a comparison of sect. 22 of the Finance Act, 1915, and sect. 15 of the Finance Act, 1917, the respective predecessors of these sub-sections, shows that the absence of these words is intentional. (*q*) *W. H. Muller, Ltd.* v. *I. R.* (1928), 7 A. T. C. 375.

(*r*) Contrast sect. 36 (2).

(*rr*) Act of 1918, s. 41, as amended by sect. 30 (1) of the Act of 1923, *infra*, pp. 420, 567.

(*s*) Act of 1925, s. 19 (1) (b), *infra*, p. 574; notice of appeal must be given within 21 days of the notice of the decision on the claim, s. 19 (2).

(*t*) See *Goslings and Sharpe* v. *Blake*, and the cases cited therewith, *supra*, p. 184.

fide carrying on business as a member of a stock exchange or the business of a discount house in this country, and is paid "out of profits or gains brought into charge" (*u*), the payer is entitled to a like repayment; the Commissioners must be satisfied that the interest has been or will be included in the payee's income tax return; it must have been paid without deduction (*v*). Claims must be made, and an appeal lies, as above stated (*x*).

Annuities Generally: Deduction of Tax.

"Any annuity or other annual payment" is assessable under Case III. of Schedule D (*y*); but annuities, of the nature of interest on investments, paid out of public revenues are taxed under Schedule C (*z*), and annuities of the nature of pensions are in general taxed under Schedule E (*a*). An annuity paid out of a superannuation fund to a person residing in the United Kingdom, may, at the discretion of the Commissioners of Inland Revenue, be charged under Case VI. of Schedule D on the profits of the year of assessment, instead of being taxed by deduction (*b*).

Annuities paid by way of alimony under deeds of separation, and so forth, are taxable under Case III. of Schedule D (*c*), as well as annuities payable under a will (*d*) or settlement (*e*), or in accordance with the terms of compromise of a probate action (*f*). So also is alimony pay-

(*u*) See note (*m*), *supra*.

(*v*) Act of 1918, s. 36 (2).

(*x*) See notes (*rr*) and (*s*).

(*y*) Sched. D, Case III. r. 1 (a), *infra*, p. 506.

(*z*) *Supra*, p. 73.

(*a*) See Chap. X.

(*b*) Finance Act, 1921, s. 32 (2), *vide infra*, p. 253.

(*c*) *Warren* v. *Warren* (1895), 43 W. R. 490; *Dalrymple* v. *Dalrymple* (1902), 4 F. 545; *In re Barry's Trusts*, [1906] 1 Ch. 768; 2 Ch. 358; *Shrewsbury* v. *Shrewsbury* (1906), 22 T. L. R. 598; *Blount* v. *Blount*, [1916] 1 K. B. 230; *In re Janes' Settlement*, *infra*, p. 188; *In re Shaw*, [1918] P. 47; *In re Hatch*, [1919] 1 Ch. 351; *Bayley* v. *Bayley*, *infra*; and cases cited *infra*, pp. 203—205.

(*d*) *In re Cooper*, [1917] W. N. 385.

(*e*) *Baxendale* v. *Murphy*, [1924] 2 K. B. 494, *supra*, p. 113; *In re Portman (Viscount)*, [1924] 2 Ch. 6. But this does not include an annual payment to a solicitor-trustee for professional work: *Jones* v. *Wright* (1927), 44 T. L. R. 128, *supra*, p. 113.

(*f*) *In re Shaw*, [1918] P. 47, *supra*.

able under an order of the Divorce Division, unless the order directs it to be calculated free of income tax, or to be paid as part of the husband's income after tax has been deducted (*g*). But the more important kinds of annuity taxed under this Case are those which are paid as the profits of investments (as where annuities are granted by an insurance or investment company (*h*)), and those which are paid as part of the consideration for purchase of an undertaking, and so on.

Where an annuity or other annual payment is paid out of taxable profits, the payer has the same right to deduct and retain tax as he has with regard to yearly interest (*i*), even though he has not in fact paid tax on those profits (*j*); where it is not wholly so paid, he is bound to deduct tax and account for it to the Crown (*k*). Every agreement to pay in full without deduction is void (*l*). A voluntary payment, such as an allowance made by a father to a son, does not make the recipient taxable (*m*); but if the allowance is paid under a deed or contract, such as a marriage contract in Scotland, the father has a right to deduct tax, and if he does not in fact do so, the amount of the tax is a gift to the son (*n*).

Life insurance premiums are not subject to assessment as annual payments, and income tax is not deductible on paying them (*o*).

The nature of various so-called "annuities" has been considered by the Courts both in relation to the question whether the annuity is directly assessable to the tax, and to the question whether the payer is entitled to deduct tax

(*g*) *Smith* v. *Smith*, [1923] P. 191, *infra*, p. 203; see *Frankfort* v. *Frankfort* (1845), 4 Notes of Cases, 280.

(*h*) See *Gresham Life, &c.* v. *Styles*, [1892] A. C. 309, *supra*, p. 135.

(*i*) *Vide supra*, pp. 182 *sqq.*, and General Rules, r. 19 (1), *infra*, p. 521; as to the amount deductible, see Act of 1927, s. 39 (1), *infra*, p. 599.

(*j*) *Bayley* v. *Bayley*, [1922] 2 K. B. 227.

(*k*) *Vide infra*, p. 193.

(*l*) General Rules, r. 23 (2); this rule is more fully considered, *infra*, p. 203.

(*m*) See *Smith* v. *Smith*, *supra*, [1923] P. at pp. 197, 202, 204.

(*n*) *Dalrymple* v. *Dalrymple* (1902), 4 F. 545, *infra*, p. 194. As to payments made under revocable dispositions, *vide infra*, pp. 319—321.

(*o*) *Howe* (*Earl*) v. *I. R.*, [1919] 2 K. B. 336, *infra*, p. 319.

against the recipient. The same considerations arise with regard to both questions, and it may be said broadly that in so far as a so-called "annuity" represents the payment of capital by instalments it is not within the purview of the income tax, either for purposes of direct assessment or of deduction at the source (*p*). It is not conclusive that the payment is called an annuity in the agreement between the payer and the recipient; the real nature of the transaction must be looked at (*q*).

Other "annual payments" must be *ejusdem generis* with annuities in order to come within Case III. (*r*). Accordingly, a payment of the nature of a rent or profit arising out of land is taxable under Case I. (*s*). Again, an allowance paid under a will or a deed of separation or an order of the Divorce Division may be an "annuity or annual payment" (*t*) although it is made up (in accordance with the provisions of the will, deed or order) of fixed payments of so much each month (*u*), or so much each week (*v*).

Annuities, &c. payable by Institutions in India.

Any annuities, pensions or other annual sums payable out of the funds of any institution in India to any person in the United Kingdom through some agent in the United Kingdom are chargeable by the Special Commissioners under Schedule D (*w*), but certain rules in Schedule C

(*p*) *Oswald* v. *Kirkcaldy Magistrates*, [1919] S. C. 147, affords a simple illustration of this principle; the payments were held to be instalments of the price of a sewer.

(*q*) *Nizam State Rail. Co.* v. *Wyatt* (1890), 24 Q. B. D. 548, *supra*, p. 179; *Sec. of State for India* v. *Scoble*, *infra*, p. 191. The dicta to the contrary in *Foley* v. *Fletcher*, *infra*, were overruled in the latter case.

(*r*) *Foley* v. *Fletcher* (1858), 28 L. J. Ex. 100, *infra*, p. 191.

(*s*) By reason of the transfer of the charge formerly imposed by Sched. A, No. II. r. 7: see *Hill* v. *Gregory*, [1912] 2 K. B. 61, *supra*, p. 175.

(*t*) *Vide supra*, p. 187.

(*u*) *In re Cooper*, [1917] W. N. 385; cf. *In re Craven; Bebb* v. *Bunny*, *supra*, p. 183.

(*v*) *In re Janes' Settlement*, [1918] 2 Ch. 54; *Smith* v. *Smith*, [1923] P. 191, *supra*, p. 187; *Eadie* v. *I. R.*, [1924] 2 K. B. 198, *infra*, p. 318.

(*w*) Sched. D, Misc. Rules, r. 7, *infra*, p. 512; these are excepted from the transfer of pensions to Sched. E by Finance Act, 1922, s. 18 (1), *infra*, p. 546.

are applied (*x*); that is to say, the person entrusted with making the payment of the annuities, &c. pays the tax and deducts it against the annuitants; and if the person entitled to the annuity, &c. is not resident in the United Kingdom the tax is allowed or repaid to him (*y*). The provisions for assessment where such an annuity, &c. becomes, or ceases to be, payable through an agent in this country and taxable by deduction under Rule 7 are indicated above (*z*).

Annuities Payable under Wills: Deduction of Tax.

The rule which avoids agreements to pay annuities or interest without deduction of tax (*zz*) makes no mention of wills. This omission is deliberate, and is due to the fact that under a will the parties "take their respective rights from the bounty or the forbearance of the testator" (*a*).

A direction in a will to pay an annuity free of income tax must therefore be carried out (*b*), and "it is simply a matter of construction . . . . whether the testator has given the annuity together with a sum equal to the income tax to the annuitant, so that the annuitant may receive the annuity free of tax, or has simply given an annuity and left the annuitant to bear his own income tax" (*c*).

A devise in general words, *e.g.*, of a "clear annuity" (*d*), or of an annuity "free of all duties" (*e*), "free from legacy duty and other deductions" (*f*), or even "free from all deductions and abatements whatsoever" (*g*), is not enough

(*x*) See Chap. IV.

(*y*) Sched. C, General Rule 2 (d), *infra*, p. 493; an appeal on the question of residence is given by Act of 1924, s. 27 (3) (c), *infra*, p. 569.

(*z*) *Supra*, p. 181, notes (*p*), (*q*).

(*zz*) General Rules, r. 23 (2), *infra*, pp. 203 *sqq*.

(*a*) *Festing* v. *Taylor* (1862), 32 L. J. Q. B. 41, per ERLE, C.J., at p. 44, *supra*, p. 59.

(*b*) *Lovat* (*Lord*) v. *Leeds* (*Duchess*) (1862), 31 L. J. Ch. 503; *supra*, p. 59; *Festing* v. *Taylor*, *supra*. As to sur-tax, *vide infra*, p. 341.

(*c*) *In re Saillard*, [1917] 2 Ch. 401, per SWINFEN EADY, L.J., at p. 402.

(*d*) *In re Loveless*, [1918] 2 Ch. 1.

(*e*) *In re Saillard*, [1917] 2 Ch. 401, where many of the earlier cases will be found cited.

(*f*) *Sadler* v. *Rickards* (1858), 4 K. & J. 302.

(*g*) *Wall* v. *Wall* (1847), 15 Sim. 513; *Lethbridge* v. *Thurlow* (1851), 15 Beav. 334; *Gleadow* v. *Leetham* (1882), 22 Ch. D. 269.

to give the annuity free of income tax; the general words, if they are used, must be qualified in some way so as to show that the testator intended this tax to be borne by the trustees and not by the annuitant (*h*). But his intention may be gathered from other parts of the will (*i*), and, where the devise is contained in a codicil, from the will itself (*j*); if the words used include the word "taxes," this may be taken to indicate that the annuitant is intended to be free of the income tax (*k*).

So also, where a question as to the validity of the will has been settled by the annuitant agreeing to take a smaller annuity than the will would give him, the direction of the will to pay the annuity free of tax will apply to the reduced annuity; but if there is any further agreement securing the reduced annuity, so that it can no longer be regarded as payable under the will alone, Rule 23 (2) of the General Rules applies, and the income tax is deductible (*l*).

If, however, the will does not give the annuity free of tax, and if there are no words from which it can fairly be inferred that a sum equal to the tax is also given to the annuitants, the trustee is entitled to deduct income tax in paying the annuity, and commits a breach of trust if he fails to do so (*m*).

The trustee must in the first instance deduct the income tax at the standard rate (*n*); but if the annuitant is entitled to any of the reliefs by way of deduction from the amount of tax payable (*nn*), and obtains repayment (*o*) of tax

(*h*) As in *Festing* v. *Taylor, supra; Lovat* (*Lord*) v. *Leeds* (*Duchess*), *supra; In re Bannerman's Estate* (1882), 21 Ch. D. 105.

(*i*) *Turner* v. *Mullineux* (1861), 1 J. & H. 334.

(*j*) *In re Buckle,* [1894] 1 Ch. 286.

(*k*) *In re Shrewsbury Estate Acts,* [1924] 1 Ch. 315, where the words (in a private act and a jointure deed made thereunder) were "clear of all deductions whatsoever whether for taxes or otherwise." The cases cited in note (*g*), *supra,* were approved and followed.

(*l*) *In re Gretton's Indenture,* [1923] 1 Ch. 77, *infra,* p. 204.

(*m*) *In re Sharp,* [1906] 1 Ch. 793; a trustee who is also an annuitant and has failed to debit himself with tax cannot plead the Statutes of Limitation in respect of any money so retained by himself.

(*n*) *Vide supra,* p. 2, and Act of 1927, s. 39 (1), *infra,* p. 599.

(*nn*) See Act of 1927, s. 40 (1), *supra,* pp. 13 *sqq.*

(*o*) *Infra,* pp. 388 *sqq.*

on that account from the income tax authorities, he is liable to hand back to the trustee a proportion of the sum repaid, equivalent to the proportion which the annuity bears to the whole of the annuitant's assessable income; the amount handed back goes into the residuary estate (*p*).

Instalments of Capital are not Annuities.

If there is a debt owing and it is agreed that it shall be paid by annual instalments, those instalments are not "annuities or other annual payments," and the provisions for deduction of tax in making payment do not apply (*pp*). Nor do these provisions become applicable because the debt and the obligation to pay the instalments are created by the same instrument (*q*). Thus, upon a sale of minerals for a definite fixed sum which is to be paid by instalments spread over a term of years, the purchasers cannot deduct tax on the instalments, because these are in the nature of capital and not of interest (*r*). But if such instalments include payments of interest as well as of principal, they are severable; and in the case of a railway undertaking purchased by the Government of India for what was called an annuity, payable half-yearly for forty-nine years, each payment including both an instalment of the purchase-price and interest on the portion of the purchase-price remaining unpaid, it was held that the payer could not deduct the tax on that portion which represented an instalment of the purchase-price (*s*), though he might deduct tax in paying the remainder. In the last-mentioned case the Government of India were enabled by a previous contract to purchase

(*p*) *In re Pettit,* [1922] 2 Ch. 765.

(*pp*) *I.e.*, General Rules 19 and 21, and Sched. A, No. III. r. 5, *vide supra,* p. 182.

(*q*) *Chadwick* v. *Pearl Life, &c.,* [1905] 2 K. B. 507, per WALTON, J., at p. 514, stating the effect of the two cases next cited.

(*r*) *Foley* v. *Fletcher, supra,* p. 188, in *Taylor* v. *Evans* (1856), 25 L. J. Ex. 269, it had already been held that such instalments were not "rent," and that there was no right to deduct tax against them.

(*s*) *Secretary of State for India* v. *Scoble,* [1903] 1 K. B. 494; [1903] A. C. 299. The Crown relied on Sched. C, because the so-called annuity was payable out of public revenues, as well as on Sched. D.

the railway, and the arrangement for payment by instalments was made when the option to purchase had been exercised; but the same principle applies where the method of payment is itself a term of the bargain; an Act of Parliament stating the method by which the instalments have been calculated is not necessarily conclusive as to how much of them represents capital and how much interest (*t*). In the realization of securities on which the principal and interest of debentures are secured, income tax is payable on that part of the proceeds which represents interest; but the debenture holders need not therefore make an election so as to increase this portion and with it the amount of income tax payable (*u*). Annual payments made under an "educational policy" by an insurance company for a term of years, and calculated so as to return the premiums paid with compound interest—the policy also providing that in the event of the child's death the premiums paid should be returned without interest—are repayments of capital except so far as they include interest, and are not annuities (*uu*).

It cannot, on the other hand, be said generally that wherever a contract of purchase stipulates for annual payments, those payments are not of the nature of annuities. Where the agreement between the parties involves no obligation to pay a definite sum, the annual payments are taxable, and the payer is entitled to deduct the tax (*v*). This principle was well exemplified where a leasehold interest was assigned (in addition to a premium) for a series of yearly sums payable quarterly throughout the unexpired term, each of which sums was exactly equal to an annual profit rental previously enjoyed by the assignors; the assignees were held entitled to deduct tax on these sums (*w*). In another case, an agreement to pay annually

(*t*) *East Indian Rail. Co.* v. *Sec. of State for India,* [1905] 2 K. B. 413; see also *Same* v. *Same* (1924), 40 T. L. R. 241.

(*u*) *Smith* v. *Law Guarantee, &c.,* [1904] 2 Ch. 569; *In re Calgary and Medicine Hat Land Co., Ltd.,* [1908] 2 Ch. 652.

(*uu*) *Perrin* v. *Dickson* (1929), Times Newsp., July 24 (C. A.).

(*v*) *Chadwick* v. *Pearl Life, &c.,* [1905] 2 K. B. 507, *supra,* p. 191; *Delage* v. *Nugget Polish Co., Ltd.* (1905), 21 T. L. R. 454, *supra,* p. 131.

(*w*) *Chadwick* v. *Pearl Life, &c., supra.*

for a term of years a percentage of gross receipts in consideration of the sale of a secret process (when no lump sum had been fixed as the price) entitled the payers to deduct tax on the payments, although the recipients were foreigners not resident in this country (*x*). A fixed sum per annum payable for a fixed period by the trustees of a deceased partner in respect of goodwill, use of the firm's name, and so on, was held to be an annual payment and not an instalment of capital (*y*).

Payments not made wholly out of Taxable Profits: Deduction of Tax.

Where any interest, annuity, or other annual payment charged under Schedule D (*z*) or any royalty (*a*) or other annual sum paid for the user of a patent, is not *payable*, or not wholly *payable* out of profits or gains brought into charge, that is, out of taxable profits, the payer is bound to deduct income tax against such payment and to account to the Crown for tax on that part which is not *actually paid* out of taxable profits (*b*). A penalty is provided for failure to deliver an account; and the tax is assessed on the payer (*c*). Any agreement to the contrary is void (*d*). If the payer's assessment for any year is *nil*, any payment made by him in that year is not made out of profits or gains brought into charge, and he must account for the tax

(*x*) *Delage* v. *Nugget Polish Co., Ltd., supra.* Cf. *Jones* v. *I. R., infra,* p. 317.

(*y*) *Mackintosh* v. *I. R.* (1928), 7 A. T. C. 209. Tax had been deducted in making the payments, which were held to form part of the beneficiary's total income for super-tax purposes: *vide infra,* p. 317.

(*z*) *Vide supra,* pp. 174 *sqq.;* Rule 21 of the General Rules does not apply to voluntary payments, although its language is different from that of Rule 19; cf. *Dalrymple* v. *Dalrymple, supra,* p. 187.

(*a*) *Vide infra,* p. 205.

(*b*) General Rules, r. 21 (1) (2), *infra,* p. 522; the substantive part of this rule corresponds with Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24 (3), but the words "to such tax" which created a difficulty in *London County Council* v. *A.-G.,* [1901] A. C. 26, *supra,* p. 3, do not now appear in the rule. The object of sect. 24 (3) was not to impose a double income tax, but to cure a defect in earlier enactments: *L. C. C.* v. *A.-G.*

(*c*) Rule 21 (2) (2A), (2B), *vide infra,* p. 366.

(*d*) Rule 23 (2), considered *infra,* p. 203.

deducted (*e*). When, on the other hand, as has been seen, payments are made out of taxable profits, the payer retains the tax so deducted (*f*). Note also that where the payments are not wholly so made the rule applies to all interest, and is not confined to yearly interest (*f*). A municipal corporation is bound therefore to deduct tax on interest for short loans contracted by it, if the interest is not paid out of taxable profits (*g*); and executors are entitled to deduct tax in paying interest under a rule of Court upon a debt due from the testator, the interest being payable primarily out of capital, and having been in fact partly so paid (*h*). Apart from interest, the annuities and other annual payments referred to are the same in both provisions (*i*). The payer has a right to deduct as against the payee, whether or no the Crown make any claim for an account (*j*).

The words "not payable, or not wholly payable" out of taxable profits, signify that the payments cannot lawfully be so paid; it is immaterial whether they are charged upon the taxable fund or not (*k*). And in order to come within the scope of the rule, the payments must not be lawfully payable out of profits taxable under any schedule; if they are payable out of profits received from land and charged under Schedule A, they will still be outside its scope (*l*).

Even if a direct assessment has been made on the payee in respect of interest paid as above described, the payer is nevertheless assessable in respect of the payment (*m*); and

(*e*) *A.-G.* v. *Metropolitan Water Board,* [1928] 1 K. B. 833; *infra,* p. 201.

(*f*) Rule 19 (1), *supra,* p. 182.

(*g*) *L.-A.* v. *Edinburgh Corpn.* (1903), 6 F. 1, *supra,* p. 184.

(*h*) *Michelham* v. *Michelham,* [1921] 1 Ch. 705.

(*i*) *Vide supra,* p. 182; the annual payment need not be of the nature of interest; cf. *R.* v. *Special Commrs., Ex parte Shaftesbury Homes,* [1923] 1 K. B. 393, *infra,* p. 291.

(*j*) *Dalrymple* v. *Dalrymple* (1902), 4 F. 545, *supra,* p. 186.

(*k*) *Sugden* v. *Leeds Corpn.,* [1914] A. C. 483; *Dickson* v. *Hampstead Borough Council* (1927), 11 Tax C. 691, *infra,* pp. 199, 200; see also *Michelham* v. *Michelham, supra;* and *Bayley* v. *Bayley,* [1922] 2 K. B. 227, *supra,* p. 187.

(*l*) *London County Council* v. *A.-G.,* [1901] A. C. 26; see note (*b*) on p. 193.

(*m*) *L.-A.* v. *Forth Bridge Rail. Co.* (1890), 28 S. L. R. 576; *supra,* p. 179. The Crown will not enforce the claim except for any balance remaining due after the payment of the tax directly assessed.

a person who is entitled by the rule to deduct tax but fails to do so, is also assessable; his neglect does not discharge the debt (*n*). The tax may, however, be deducted against payments made in arrear (*o*). The amount deductible is in every case to be calculated at the standard rate for the year in which the payment becomes, or became, due (*p*).

An assurance company which carries on the business of granting annuities is, however, prevented by a special provision (*q*) from treating as having been paid out of profits brought into charge any amount of annuities paid by which the taxed income of its "annuity fund" (*r*) is exceeded. Such a company is therefore bound to account to the Crown for the tax upon any such excess; whereas before the enactment of this provision it had been held entitled to retain for its own use the tax deducted upon annuities which were legally payable out of the whole of its assets, without allocating the annuities to any particular portion of its total income (*s*).

Payments out of Funds of Local Authorities and Insurance Offices and Investment Companies.

Important decisions with regard to deducting and accounting for tax on payments not wholly made out of taxable profits have been given in connection with the funds of local authorities and of insurance offices. The assets of such bodies often comprise funds differing in their nature and impressed with different liabilities. In these cases the question has been, not whether the paying authority or

(*n*) *L.-A.* v. *Edinburgh Corpn.* (1905), 7 F. 972.

(*o*) Cf. *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100, *supra*, p. 183.

(*p*) General Rules, r. 21 (1); Act of 1927, s. 39 (1), *infra*, p. 599.

(*q*) General Rules, r. 21 (3), *infra*, p. 522; this provision takes the place of sect. 13 of the Finance Act, 1915 (5 & 6 Geo. 5, c. 62), which was passed in order to get rid of the decision of the House of Lords in *Edinburgh Life, &c.* v. *L.-A.*, *infra*, p. 199.

(*r*) Defined in sect. 237, *infra*, p. 471. The periodical return referred to in the definition as stating the liability of the company under its annuity contracts is that referred to under heading No. 7 in the Fourth Schedule (A) to the Assurance Companies Act, 1909 (9 Edw. 7, c. 49); see also sect. 5.

(*s*) *Edinburgh Life, &c.* v. *L.-A.*, *infra*, p. 199.

company had a right to deduct tax against the payee, but whether, having done so, it was entitled to retain the amount deducted for its own benefit, because the payment was made out of taxable profits (*t*), or whether it was bound to account for that amount to the Crown, because the amount was "not payable or not wholly payable" out of taxable profits (*u*).

The right of the debtor to retain for his own benefit the amount of tax deducted against his creditors "depends upon whether he can answer in the affirmative each of the two following questions:—

"(1) Have the interest and the annuities been, in fact, paid, or must they, in the circumstances of the case, be taken to have been, in fact, paid out of 'profits or gains brought into charge,' *i.e.*, out of the so-called 'taxed fund?' (2) Was it lawful to pay them out of that fund? If either of these questions be answered in the negative, he must account to the revenue for the tax he has deducted. This is, I think, the only workable rule which can in practice be applied. It inflicts no injustice upon the subject. To allow him to retain the tax where he has not, in fact, paid it in the first instance himself would be, in effect, to allow him to levy a tax upon his creditors for his own benefit, not for that of the Crown. And if he has applied the moneys of a 'taxed fund' to discharge debts liable to income tax, in a way the law forbade him to do, he is the author of his own wrong and deservedly suffers" (*x*).

When Lord ATKINSON says "must they, in the circumstances of the case, be taken to have been, in fact, paid out of . . . the so-called 'taxed fund,'" he refers to the subsidiary but important question as to whether apportionment is allowable between two funds of the debtor, one of

(*t*) See Rule 19 (1), *supra*, p. 182.

(*u*) Rule 21 (1) (2); as to the meaning of the words quoted, *vide supra*, p. 193.

(*x*) *Sugden* v. *Leeds Corpn.*, [1914] A. C., *supra*, p. 194, per Lord ATKINSON at p. 506.

which is taxable, and the other is not. The question is thus answered in an earlier part of his speech:—

"What it (*y*) is an authority for is, I think, this: (1) that there is not to be any apportionment of rateability in favour of the Crown between two funds out of either of which the interest or annuities charged with the tax may lawfully be paid; and (2) that in case a mixed fund be formed from two funds, out of either of which the interest and dividends charged with the tax may lawfully be paid, you are to assume, in the absence of evidence to the contrary, that they have been paid from that portion of the mixed fund out of which they should be paid in the due course of administration, which due course is this, 'that annual charges should, in the first place, be paid out of annual income (*z*).'"

The cases in which these principles have been applied are of wide interest. In three of them the London County Council were concerned. In what may be called the preliminary case, the Council were held liable to pay income tax in respect of interest received on loans advanced by them to other authorities (*a*). The next case arose in respect of the dividends paid by the Council upon their consolidated stock and the interest paid by them upon other moneys borrowed by themselves. The interest received by them from other authorities was credited to their Consolidated Loans Fund. They paid the interest payable by them partly out of this fund, partly out of rents and profits on lands charged with income tax under Schedule A (*b*), and partly out of rates. In paying the interest due, the Council deducted tax; they accounted for the amounts deducted so far as the interest was paid out of rates (because these were not taxable profits), but declined to account for the amounts deducted against interest paid out of interest received, or paid out of the

(*y*) The speech of Lord DAVEY in *London County Council* v. *A.-G.*, [1901] A. C. 26, *infra*.

(*z*) Per Lord ATKINSON in *Sugden* v. *Leeds Corpn.*, [1914] A. C. at p. 504.

(*a*) *L. C. C.* v. *Grove* (1896), 3 Tax C. 508, *supra*, p. 180.

(*b*) *Vide supra*, p. 60.

rents and profits referred to. They were held to be justified in their refusal (*c*).

In the third of these cases, the London County Council sought to retain out of the amount deducted from that portion of the dividends which was paid out of the rates the income tax paid under Schedule A (*d*) upon the annual value of lands (including their own offices and so forth) (*e*), which they themselves occupied, and from which they derived no rents or pecuniary profits that could be devoted to the payment of dividends. These lands were, however, charged with the payment of the dividends (which far exceeded their annual value), and were mortgaged to their full value. The Council contended that the annual value of the lands should be treated as annual income which they had applied to satisfy these charges. The Council's claim was refused on the ground that although charged with the dividends, the lands in question did not, in fact, contribute anything to its payments, and the dividends could not be taken as constructively paid out of "a mere enjoyment" (*f*).

In the case of a life assurance company which granted annuities as a part of its business (*g*), there was no particular fund earmarked for their payment; but they were paid in part out of interest, dividends and rents received by the company after income tax had been deducted against them, and in part out of premiums, considerations paid for annuities and profits on the realization of investments. The interest, dividends and rents, on which tax had been deducted, were the only part of the company's income on which they were charged with tax; for if these had all been absent, the company's business would have resulted in a loss. This part of their resources provided a fund amply sufficient to pay the annuities in full, had

(*c*) *L. C. C.* v. *A.-G.*, [1901] A. C. 26, *vide supra*, pp. 59, 180.

(*d*) *Vide supra*, p. 61, where the effect of the decision upon Sched. A is discussed.

(*e*) See *Aberdeen Commissioners of Supply* v. *Russell* (1890), 17 R. 942, *supra*, p. 180.

(*f*) *A.-G.* v. *London County Council*, [1907] A. C. 131; as explained by Lord Atkinson in *Sugden* v. *Leeds Corpn.*, [1914] A. C. at p. 506.

(*g*) Cf. *Gresham Life, &c.* v. *Styles*, [1892] A. C. 309, *supra*, p. 138.

the company elected to pay them out of that fund. The whole of the assets of the company, however, formed the fund upon which the annuities were charged. The company claimed to retain the tax upon the whole of the annuities; but the Crown contended that the company must apportion the annuities over the whole of the assets out of which they might have been paid, and must account for such amount as was proportionate to the untaxed part of those assets. The Scottish Courts decided in favour of the Crown, but the House of Lords held that the company's claim was well founded that no such apportionment could be made, and that the annuities must be assumed to be paid out of the taxed fund (*h*). Where the annuities are payable out of taxable profits, it is not necessary "to use, in paying the annuities, the actual moneys received in respect of the profits or gains in order to obtain the benefit of the deduction and retention" (*i*). So far as it relates to life assurance companies carrying on the business of granting annuities, the decision of the House of Lords is no longer applicable (*k*), but the general principles upon which it was decided are not affected.

A city corporation, on the other hand, had to pay interest on various loans; some of these were raised for trading undertakings (such as waterworks, gasworks and tramways), which were lucrative, and yielded a profit exceeding the interest on these loans by 78,519*l.*; other loans were raised for sanitary undertakings (including electric lighting), which were not lucrative, and the interest on these loans exceeded the profit derived from these undertakings by a sum of 93,929*l.*; there was also a deficit when the aggregate profit in respect of all the undertakings was set against the aggregate interest payable. The

(*h*) *Edinburgh Life, &c.* v. *L.-A.*, [1910] A. C. 143. This decision was not followed in *Hancock* v. *General Reversionary, &c. Co.*, [1919] 1 K. B. 25, *supra*, p. 136, where the question of the application of sect. 24 (3) of the Act of 1888 did not arise directly; and it is submitted that the *General Reversionary* case is, at any rate, no authority on General Rule 21, which takes the place of that provision.

(*i*) [1910] A. C., per Lord GORELL at p. 163.

(*k*) Rule 21 (3) of the General Rules; *vide supra*, p. 195.

deficit on the sanitary undertakings was met out of the borough fund, which included rates as well as the 78,519*l.* yielded by the lucrative undertakings; the corporation was held, upon the construction of the local Acts, to have had no power to meet the deficit in this way.

The Crown claimed that the corporation were bound to account for the tax deducted on payment of 78,519*l.* (*l*); and succeeded in their claim, because that sum was not legally payable out of the borough fund, although it had in fact been so paid (*m*); and not for the reason that the interest must be taken not to have been paid wholly or partly out of a taxed fund; such a contention had been held inadmissible in the case last cited (*n*).

In a more recent case (*o*), the council of a metropolitan borough had deducted tax in paying interest on money borrowed for the purpose of their housing scheme (*p*); under statutory regulations, the interest had to be paid out of the revenue of the scheme, any deficit being made up by a subsidy provided partly by the Exchequer and partly by the London County Council; and the accounts of the housing scheme had to be kept separately from the other accounts of the borough council, but no special fund was kept for the scheme; apart from the revenue of that scheme, they also possessed taxable profits (including those derived from their electricity undertaking) amply sufficient to pay the interest in question. They were, nevertheless, held to be liable to account for the tax deducted in respect of the amount of interest paid over and above that which was met out of the

(*l*) *I.e.*, of that part of the 93,929*l.* paid out of the profits of the lucrative undertakings; the corporation admitted liability in respect of the part paid out of rates.

(*m*) *Sugden* v. *Leeds Corpn.*, [1914] A. C. 483.

(*n*) *Edinburgh Life, &c.* v. *L.-A.*, *supra*, p. 199.

(*o*) *Dickson* v. *Hampstead Borough Council* (1927), 11 Tax C. 691; approved by the C. A. in *Birmingham Corpn.* v. *I. R.* (1929), 45 T. L. R. 463, where the facts were similar, save that the deficit was made up by a subsidy provided by the Exchequer. In both cases the income of the scheme included the produce of a 1*d.* rate.

(*p*) Housing, &c. Act, 1919 (9 & 10 Geo. 5, c. 35), ss. 1 (1), 7 (1), 8 (1); Local Authorities (Assisted Housing Schemes) Regulations, 1919, S. R. & O., 1919, No. 2047; London County Council Assisted Housing Schemes (Losses by Metropolitan Borough Councils) Regulations, 1922, S. R. & O., 1922, No. 874.

income derived from the scheme, in which income the subsidy was not included.

The Metropolitan Water Board carried on their undertaking at a loss in one year of assessment; consequently, in the following year, no assessment was made upon them under No. III. of Schedule A (*q*). They were held to be liable to account for tax deducted in payment of interest on stocks and debentures and of other annual payments in the second year out of the profits made in that year, for these were not "profits or gains brought into charge in that year" (*r*).

Failure to Deduct Tax or refusal to allow Deduction.

If a person who is entitled to deduct tax against another in making any payment, refrains from doing so, he cannot afterwards seek to recover against the Crown the amount of income tax which he has thus failed to deduct (*s*). Where he is bound to account to the Crown for the tax deducted, his failure to deduct tax does not excuse him from his liability (*t*). But there has been some difference of practice where the payer has claimed to recover from the payee amounts of income tax which the payer had failed to deduct against him. The Courts in England, applying the well-established principle that payments voluntarily made under a mistake of law cannot be recovered, have, in general, rejected such claims (*u*). In Scotland, on the other

(*q*) Under Rule 3 the assessment was based on the profits of the preceding year, as it is now under Case I. of Sched. D: *vide supra*, p. 161.

(*r*) *A.-G.* v. *Metropolitan Water Board*, [1928] 1 K. B. 833.

(*s*) *de Peyer* v. *The King* (1909), 100 L. T. 256; the provision for repayment of tax in a limited class of cases made in sect. 36 (1) of the Act of 1918 has been considered *supra*, p. 185. (*t*) *Vide supra*, p. 193.

(*u*) *Currie* v. *Gould* (1817), 2 Maddock, 163; *Ex parte Turner* (1864), 11 L. T. 352; *Ex parte Wythes* (1885), 53 L. T. 492, *supra*, p. 183; *Warren* v. *Warren* (1895), 43 W. R. 490, *supra*, p. 186; *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100; *In re Hatch*, [1919] 1 Ch. 351, *supra*, p. 186; *Ord* v. *Ord*, [1923] 2 K. B. 432. It is not easy to reconcile with this series of cases the decision in *Crane* v. *Kilpin* (1868), L. R. 6 Eq. 334, that a debtor was entitled, in a final settlement with his creditors, to deduct income tax in respect of previous payments of interest made without deduction by trustees, to whom he had assigned a fund for the benefit of his creditors.

hand, a lessee of minerals who had been accustomed to pay royalties in full and afterwards to receive a repayment of income tax from the lessor, was held entitled, when a new lessor supervened who refused repayment, to recover the amount of the tax, on the ground that the payment was made "according to the usual course of dealing, or under excusable error or misunderstanding" (*x*); in an earlier case, however, arising with regard to interest on a loan, where no such course of dealing was shown, relief had been refused (*y*). The tax may be deducted on payment of arrears (*z*), but always at the standard rate prevailing in the year when the payment became due (*a*).

A special provision deals with cases in which the tax has not been deducted, or has been deducted at too low a rate, previously to the passing of the Act imposing the income tax for the year, and enables the payer to make up any deficiency caused either by the failure to make the deduction or by the fact that the tax is imposed for that year at a higher rate than was in force when the deduction was made. The language of this sub-section is wide; but it appears to be aimed only at the difficulty created by the fact that the Act imposing the tax is not now usually passed at the beginning of the year, and not to authorize any deduction of tax except in respect of the particular year for which the interest or other payment is due (*b*). If, however, the payment is made in arrear, the payer may deduct tax on the whole sum paid; he is not confined to deducting the tax for the particular year in which the payment is made (*c*).

(*x*) *Agnew* v. *Ferguson* (1903), 5 F. 879, per Lord MONCRIEFF at p. 885; the analogous provisions as to deduction against payments in the nature of rent are considered *supra*, p. 56.

(*y*) *Galashiels Building Soc.* v. *Newlands* (1893), 20 R. 821; see also *Oswald* v. *Kirkcaldy Magistrates*, [1919] S. C. 147, per Lord STRATHCLYDE, L.P., at p. 152.

(*z*) *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100, *supra*.

(*a*) Act of 1927, s. 39 (1), *infra*, p. 599; as to "standard rate," see p. 2, *supra*.

(*b*) Act of 1918, s. 211 (2). Cf. *Hill* v. *Kirshenstein*, [1920] 3 K. B. 556, *supra*, p. 56; but that case was decided with regard to rent, and as to interest, &c. there is no provision corresponding with Sched. A, No. VIII. r. 1, *infra*, p. 486.

(*c*) *Kirk* v. *Cunnington*, [1921] 3 K. B. 637, *supra*, p. 56. The tax to be

In similar circumstances, the payee is also liable to a direct assessment for the amount of tax which has not been deducted against him (*d*).

There is a penalty of 50*l*. for refusing to allow a deduction of tax authorised by the Income Tax Act, 1918 (*e*).

Agreements against Deduction Void: Marriage Settlements, &c.

Every agreement for payment of interest or other annual payment (including annuities and royalties) without allowing the deductions of tax discussed in this chapter is void (*f*).

This rule has been held to apply to marriage and other settlements (*g*), to voluntary agreements of separation (*h*), to settlements or deeds of covenant carrying out orders made in the Divorce Division (*i*),—though a direction in such an order for the payment of an annual sum free of income tax would be perfectly valid (*k*),—to an agreement settling the

deducted must be calculated at the standard rates prevailing in the respective years when the payment became due: see note (*a*), *supra*.

(*d*) Sect. 211 (1), *infra*, p. 465; see under Sched. D, Case VI., *infra*, p. 240.

(*e*) General Rules, r. 23 (1), *infra*, p. 523; *A.-G.* v. *Shield* (1858), 28 L. J. Ex. 49, *infra*.

(*f*) General Rules, r. 23 (2), *infra*, p. 523, which takes the place of part of sect. 103 of the Income Tax Act, 1842. The rule also applies to rent, and to deductions of tax charged under Sched. A, *vide supra*, pp. 55 *sqq*. It does not apply to wills, *vide supra*, p. 189.

(*g*) In *A.-G.* v. *Shield* (1858), 28 L. J. Ex. 49; *Floyer* v. *Banks* (1863), 32 L. J. Ch. 610; *Blair* v. *Allen* (1858), 21 M. 15; the settlements were marriage settlements; in *In re Cain's Settlement*, [1919] 2 Ch. 364, the settlement fulfilled a similar purpose. In *Brooke* v. *Price*, [1917] A. C. 115, it was a settlement by consent on divorce.

(*h*) *Shrewsbury* v. *Shrewsbury* (1906), 22 T. L. R. 598; see also *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100, *supra*, p. 202; *Booth* v. *Booth*, [1922] 1 K. B. 66; *Ord* v. *Ord*, [1923] 2 K. B. 432.

(*i*) *Blount* v. *Blount*, [1916] 1 K. B. 230, *supra*, p. 186; *In re Peck's Settlement*, [1921] 2 Ch. 237; *Burroughes* v. *Abbott*, [1922] 1 Ch. 86.

(*k*) *Blount* v. *Blount*, *supra*; and see *Frankfort* v. *Frankfort*, *supra*, p. 187; and *In re Shaw*, *supra*, p. 186. For the present practice of the Divorce Division in this matter, see *Dayrell-Steyning* v. *Dayrell-Steyning*, [1922] P. 280; *Sherwood* v. *Sherwood*, [1929] P. 120; as to orders which intend tax to be deducted, see *Smith* v. *Smith*, [1923] P. 191, *supra*, p. 187.

question of a disputed will (*l*), and to a trust deed containing a covenant for payment of debenture interest (*ll*).

The recipient of an annuity or other annual payment under a covenant contained in any such document is therefore bound to allow a deduction of income tax, in spite of any stipulation to the contrary, unless the amount of the annuity or annual payment is directed thereby to be ascertained in one of two ways:—first, where the agreement provides for a division between the parties of the income which may remain after income tax on the whole has been deducted, even though it is further provided that the proportion paid to one of the parties shall not be less than a fixed sum paid without deduction of tax (*m*); and secondly, where the agreement provides "for the payment out of gross income of an annuity of such an amount as that after deduction of income tax thereon a fixed sum will be available to the annuitant" (*n*).

In *Brooke* v. *Price*, the direction in the settlement was to pay "an annual sum equal to one-fourth part of the annual net income (after income tax on the whole income has been paid) . . . or if one-fourth part . . . shall be less than the clear annual sum of 2,500*l*., then the clear annual sum of 2,500*l*. (without deducting income tax therefrom) out of such annual income," and this agreement was held to fall within the former class of exceptions. But it is not enough to save an agreement from being invalid, that the annual payment is directed to be made out of a fund which has already borne tax, if that payment is a fixed sum which does not vary with the annual yield of the fund in question; thus, a direction to pay the income from shares in a company "to the extent of, but not exceeding 2,000*l*. per annum" (*o*), a trust to pay out of the income of the settled

(*l*) Cf. *In re Shaw*, [1918] P. 47, *supra*, p. 186; *In re Gretton's Indenture*, [1923] 1 Ch. 77, *supra*, p. 190.

(*ll*) *South American Stores, Ltd.* v. *I. R.* (1926), 12 Tax C. 905.

(*m*) *Brooke* v. *Price*, [1917] A. C. 115; *Smith* v. *Smith*, *supra*.

(*n*) *Brooke* v. *Price*, *supra*; *Booth* v. *Booth*, [1922] 1 K. B. 66; see *In re Gretton's Indenture*, [1923] 1 Ch. 77, per ROMER, J., at p. 88. Contrast *In re Portman* (*Viscount*), [1924] 2 Ch. 6, *supra*, p. 186.

(*o*) *In re Cain's Settlement*, [1919] 2 Ch. 364.

property "the annual sum of 1,400*l.* free of all deductions whatsoever, including income tax" (*p*), and a trust to pay an "annuity of 5,000*l.* and the tax and duties thereon . . . exclusively out of the income of" stock purchased or transferred for the purpose (*q*), are all alike void so far as payment free of income tax is concerned.

Again, in *Booth* v. *Booth*, the covenant was to pay "such weekly sum as will after deduction of income tax amount to 260*l.* per annum"; this covenant was held to be valid as coming within the second class of exceptions above indicated; but a covenant to pay a fixed sum "free of income tax" cannot be brought within that class (*r*), any more than a covenant to pay an "allowance . . . clear of all deductions" (*s*). Where stocks are the subject of the trust, a covenant by the settlor to pay to the trustees every year a sum equal to the tax deducted at the source in paying the interest or dividends is valid; but the settlor is entitled to deduct tax in paying that annual sum (*t*).

It should be borne in mind that the rule in question applies only to contracts between the payer and the payee; the rule has no bearing where the payer is no party to the agreement (*u*).

The rule renders void only that portion of the agreement which purports to prevent a deduction of tax, and not the whole agreement (*x*).

Patent Royalties.

Where a royalty or other sum in respect of the user of a patent is paid wholly out of taxed profits, the payer is entitled to deduct and retain the tax thereon; if it is not wholly so paid, he must deduct the tax, but must account to

(*p*) *Burroughes* v. *Abbott*, [1922] 1 Ch. 86.

(*q*) *In re Gretton's Indenture*, [1923] 1 Ch. 77.

(*r*) *Blount* v. *Blount*, [1916] 1 K. B. 230, *supra*, p. 203; followed in *South American Stores, Ltd.* v. *I. R.*, *supra*, p. 204, where the covenant was to pay the interest "free of English income tax."

(*s*) *Shrewsbury* v. *Shrewsbury* (1906), 22 T. L. R. 598.

(*t*) *In re Gordon's Settlement*, [1924] 1 Ch. 146.

(*u*) *Brooke* v. *Price*, [1917] A. C. 115, per Lord WRENBURY at p. 126.

(*x*) The cases above cited were all decided upon that footing.

the Revenue (*y*). If an interest in inventions and patents is sold for (in addition to certain fixed payments) a percentage payable annually for a term of years on the proceeds of sales of machines made in pursuance of the agreement, the payer is entitled to deduct income tax on the percentage payments (*z*). The Crown is entitled to deduct tax in making a payment for the use of a patent, though it is paid in a lump sum (*a*). Unless the royalty or other sum is paid under a contract and wholly out of the profits or gains of a party to the contract, the recipient is liable to be directly assessed, provided that tax has not already been deducted against him under Rule 21 (*b*).

Copyright Royalties.

If a person (as principal or agent) makes any payment of or on account of royalties or periodical sums in respect of a copyright to a recipient whose usual place of abode is not within the United Kingdom, the payer is compelled to deduct income tax in making the payment, and to account for the tax (*c*). The recipient may be either the owner (in the ordinary sense) of the copyright, or a person who has assigned the copyright, but is still entitled to periodical payments in respect of it. The provision does not apply to royalties, &c. paid for any dramatic or artistic work for cinematograph production; nor to those shown to be paid in respect of copies of works exported for distribution outside the United Kingdom (*d*).

(*y*) General Rules, rr. 19 (2), 21 (1), *infra,* pp. 521, 522. The effect of such payments on the computation of the payer's profits is considered *supra,* p. 136.

(*z*) *Jones* v. *I. R.*, [1920] 1 K. B. 711; the percentage payments were held to form part of the recipient's total income, *vide infra,* p. 317; the fixed payments admittedly did not, though payable in instalments: see *Foley* v. *Fletcher, supra,* p. 188.

(*a*) *Constantinesco* v. *The King* (1927), 43 T. L. R. 727; see also *Mills* v. *Jones* (1928), 45 T. L. R. 31, *supra,* p. 124.

(*b*) *Wild* v. *Ionides* (1925), 9 Tax C. 392.

(*c*) Act of 1927, s. 25, *infra,* p. 589; a certain retrospective effect is given to this enactment by sub-sect. (3).

(*d*) Sub-sects. (2), (3); the facts as to export must be proved to the satisfaction of the Special Commissioners, to whom appeals may be brought under Rule 21 (2), (3), *infra,* p. 522.

The object of this provision is carried out by extending the scope of Rule 21 of the General Rules (*e*); but it is immaterial whether the royalties, &c. in respect of copyrights are paid out of profits or gains brought into charge or not. Every agreement for payment of royalty, &c. without allowing such a deduction is void so far as the stipulation against deduction is concerned; and there is a penalty of 50*l*. for refusing to allow the deduction (*f*).

Discounts.

The tax charged under Case III. of Schedule D extends to "all discounts" (*g*), that is to say, to all discounts which are either "profits" or "income" (*h*); in other words, the tax extends to all "profits arising from discounts received on discounting transactions," or to all "profits on securities bought at a discount, and on transactions involving a discount."

"The rule (*h*) . . . . relates to profits on all discounts from whomsoever made. . . . . I take it that the rule applies equally whether the lender solicits the privilege of furnishing money to the Treasury at prices which it fixes . . . . or whether the borrower approaches the lender . . . . and offers his acceptance . . . . in order to obtain temporary accommodation. It includes both the transaction between the original parties and the transaction as modified by the introduction of the *bonâ fide* holder for value. In both cases there are two economic elements, the one the value of the usufruct foregone, as measured by interim interest, and the other the risk that the money will never be repaid

(*e*) The effect of this rule is considered *supra*, pp. 193 *sqq.*; and as regards assessment and appeal, *infra*, pp. 366, 374.

(*f*) General Rules, r. 23, *vide supra*, p. 201, applied by sect. 25 (5) of the Act of 1927.

(*g*) Case III. r. 1 (b), *infra*, p. 506.

(*h*) For the rules in Case III. are subject to the words prescribing the scope of Case III. which appear in Rule 2 of Sched. D, *vide supra*, p. 174. The effect, therefore, of the present form of enactment does not differ materially from that of Rule 2 of the third case of Sched. D in the Act of 1842, which speaks of "the profits . . . . on all discounts," and on which *Brown* v. *National Provident Institution*, [1920] 3 K. B. 35; [1921] 2 A. C. 222, *supra*, p. 178, was decided.

at all. . . . . Furthermore, there is nothing to show that under this [rule] profits on discounts have to be analyzed into a return for the use of money by way of income, and a possible accretion to capital" (*a*).

Treasury Bills are documents by which the Government undertakes to pay, on the expiration of a term, a certain sum of money in consideration of a smaller sum paid to the Government at the time of issue; they are, therefore, "issued at a discount," and, according to the principles just stated, any profit realised in the course of business by reason of this fact is taxable under Case III. Even if the discounted bill has been sold before maturity, or has been converted into War Loan, the whole of the increase in price realised by the sale is included in the taxable profit (*b*); and the same principles apply to a bill purchased in the market and not from the Government. War Expenditure Certificates are on the same footing as Treasury Bills for this purpose (*c*).

Profits from discounts are brought into account for tax purposes in the year in which they are in fact received; though the interest may have been accruing during two or more financial years, it is not to be apportioned to each of those years (*c*). If there are transactions in discounts, and possibly if any Treasury Bills are held, in any year of assessment, although no profits are made in that year, there may be an assessment on the profits of the preceding year; but if there are no such transactions, and if no Treasury Bills are held in the year, no assessment appears to be possible, although profits were made in the preceding year (*d*).

Under Case III. each transaction involving a discount is treated as a separate source of taxable income; and there is no set-off for losses incurred; but where a person carries on

(*a*) Per Lord SUMNER, [1921] 2 A. C. at pp. 254, 255: see previous note.

(*b*) *Ibid.*, on this point the C. A. had decided otherwise, but was overruled by the H. L.

(*c*) *Brown* v. *National Provident Institution, supra.*

(*d*) The statement in the text is intended to give the effect of the decision last cited together with sect. 22 of the Act of 1926, *vide supra*, p. 5.

a trade of discounting, the assessment may be made under Case I., and, if so, he will be entitled to debit himself with losses (*e*).

Profits of Securities bearing Interest payable out of the Public Revenue.

Such profits of this kind as are not charged under Schedule C are to be charged under Case III. (*f*); Schedule C charges the interest itself together with dividends and annuities (*g*). The profits left to be charged under Case III. of Schedule D appear therefore to be profits of a similar kind to those considered under "discounts," for a gain due to a change of investments is not taxable income (*h*), except where the buying and selling of investments is carried on as a trade, the profits of which are taxable under Case I. (*i*).

Small payments of Interest out of Public Revenues.

Interest, annuities, dividends and shares of annuities payable out of public revenues are in general taxed at the source under Schedule C (*k*), but where the half-yearly payment in respect of any of these is 50*s*. or less, the assessment is made under Case III. of Schedule D (*l*) directly upon the recipient, unless he is exempt from income tax (*m*).

Savings Bank Deposits.

Savings banks are exempt from tax under Schedule D in respect of any income applied to the payment or credit of interest to the depositor (*n*); but the depositor is charged

(*e*) See per Lord STERNDALE, M.R., [1920] 3 K. B. at p. 51.

(*f*) Sched. D, Case III. r. 1 (c), *infra*, p. 506.

(*g*) See Chap. IV.

(*h*) See per Lord SUMNER in *Brown* v. *National Provident Institution*, [1921] 2 A. C. at p. 256.

(*i*) *Vide supra*, pp. 122—125.

(*k*) *Supra*, p. 73.

(*l*) Sched. C, first set of rules, r. 9, *infra*, p. 495; second set, r. 3, *infra*, p. 496; third set, r. 2, *infra*, p. 497; Sched. D, Case III. r. 1 (d), *infra*, p. 506.

(*m*) *Vide supra*, p. 11.

(*n*) Sect. 39 (3) (b), *infra*, p. 419; see proviso (ii) as to cases where the interest paid to any depositor in the year exceeds 5*l*.

under Case III. with the tax on such interest, unless the savings bank has deducted tax in paying or crediting him with the interest (*o*).

Interest on War Loan, Exchequer Bonds, &c.

The interest on certain Exchequer Bonds issued during the war or within six months thereafter paid without deduction of tax, the interest on War Loan Stock so paid and the interest on War Loan Stock inscribed in the Post Office Register (where the stock does not exceed 200*l.* in nominal amount) are all taxable under Case III. of Schedule D (*p*). The tax, in general, is levied on the interest received in the previous financial year, and not upon that received during the year of assessment (*q*). If a holding of Exchequer Bonds has ceased before the year of assessment begins, the continued holding of War Loan Stock does not entail liability to tax on the previous year's income from Exchequer Bonds (*r*); the stock and the bonds are separate sources of income for the purpose of the provisions with regard to cesser of possession and acquisition of a new source (*rr*). But there is no such distinction between the ordinary War Loan and the Post Office issue (*s*). Holdings of War Loan by a husband and a wife living together in any year of assessment are treated as a single source of income (*ss*); but for the year of assessment in which the husband dies, the widow is taxed on her interest on War Loan Stock so paid in the preceding year, though her husband was then alive and living with her (*t*).

(*o*) Sched. D, Case III. r. 1 (e), *infra*, p. 506.

(*p*) Sect. 49, *infra*, p. 422; and Sched. D, Case III. r. 1 (f), *infra*, p. 507. As to British municipal loans raised in the U. S. A., see sect. 46 (4). The option given by sect. 27 of the Finance Act, 1921, to have the tax deducted at the source is considered *supra*, p. 74.

(*q*) Case III. r. 2, *vide supra*, p. 176.

(*r*) *Grainger* v. *Maxwell's Exors.*, [1926] 1 K. B. 430; see *Brown* v. *National Provident Institution*, *supra*, p. 207.

(*rr*) Act of 1926, s. 30, *vide supra*, p. 177.

(*s*) *Turton* v. *Mitchell* (1927), 138 L. T. 365.

(*ss*) *Walker* v. *Howard* (1927), 138 L. T. 367; in spite of a substantial purchase by the husband in the year of assessment, he was taxable only on the interest received by his wife in the previous year; but see now Act of 1926, s. 30, proviso (ii), *supra*, p. 177.

(*t*) *Leitch* v. *Emmott*, [1929] W. N. 139, *vide infra*, p. 279.

If War Loan Stock is sold with interest rights, the interest accrued forms part of the purchaser's income, and cannot be apportioned to the vendor (*tt*). Executors are not taxable in respect of interest accrued on War Stock or Bonds accepted by the Inland Revenue in satisfaction of death duties (*u*); but are liable to tax on interest accrued due during the half-year in which the testator died (*uu*).

Foreign and Colonial Assurance Companies.

Many assurance companies (*v*) carry on business in the United Kingdom although, the "head and seat and directing power" (*vv*) being situate abroad, they are not "residing" in the United Kingdom (*w*) within the meaning of the Income Tax Acts. In relation to such companies, the Crown might have difficulty in exercising its option to levy the tax upon interest on investments rather than upon actual profits of trading (*x*), were it not enabled to do so by a set of provisions contained in the rules of Case III. (*y*). Under these provisions, an assurance company not having its head office in the United Kingdom is liable to be assessed on a certain portion of the income from the investments of its life assurance fund (that is, the fund representing the amount of its liability with respect to its life assurance business, excluding annuity business) for the year preceding the year of assessment. This portion of income is in general calculated at the same proportion of the income as the amount of premiums received from policy holders resident in this country or from any other policy holders who have made their proposals through the company's office or agency in this country bears to the total premiums received (*y*); a similar proportion of expenses of management is

(*tt*) *Wigmore* v. *T. Sumerson, Ltd.*, [1926] 1 K. B. 131.

(*u*) *Monks* v. *Fox's Exors.*, [1928] 1 K. B. 351; see Finance Acts, 1917 (7 & 8 Geo. 5, c. 31), s. 34; 1918 (8 & 9 Geo. 5, c. 15), s. 42.

(*uu*) *Reid's Trees.* v. *I. R.*, [1929] S. L. T. 372.

(*v*) Defined in sect. 237, *infra*, p. 471.

(*vv*) *Vide supra*, p. 94.

(*w*) *Vide supra*, p. 90.

(*x*) *Vide supra*, p. 111.

(*y*) Sched. D, Case III. r. 3, *infra*, p. 507; the existence of these rules does not prevent the Crown, at its option, from taxing the profits under Case I.: *Equitable Life, &c. of U.S.A.* v. *Hills* (1924), 8 Tax C. 657.

deducted (*z*). But where the head office of the company is in a British possession, the Commissioners of Inland Revenue may by regulation prescribe some other basis of apportionment (*zz*).

This charge is, however, alternative only and not additional, and will be cancelled or reduced proportionably if the income of the life assurance business has already borne tax by deduction, or "otherwise," that is, if a charge has already been made under Case I. on the trading profits of that business (*a*); "life assurance business" includes the business of granting annuities (*b*). The making of such charges is in the hands of the Special Commissioners (*c*).

Expenses of Management of Life Assurance and other Companies.

As has been seen (*d*), companies carrying on certain classes of business are liable to be taxed (at the option of the Crown) upon the interest and dividends derived from their investments, instead of being taxed upon the profits of their trade under Case I. of Schedule D (*d*). Where there is no assessment of the kind last mentioned, provision is made for relief in respect of any sums disbursed as expenses of management (including commissions) (*e*); a special reduction in rates of premium made in favour of the members of a particular body is not a disbursement of "expenses" (*f*). But for this provision, the companies to which it refers would be at a disadvantage as compared with other companies of the same class, who are assessed upon their profits, because expenses of management are deducted before the profits of trade can be ascertained (*g*); relief, however, is not to be given so as to make the tax paid less

(*z*) Sect. 33 (4), *infra*, p. 416; see succeeding paragraphs.

(*zz*) Case III. r. 3 (2), proviso.

(*a*) Rule 3 (4).

(*b*) See definition in sect. 237, *infra*, p. 472.

(*c*) Rule 3 (3), *infra*, p. 508.

(*d*) *Supra*, pp. 111, 112.

(*e*) Sect. 33, *infra*, p. 415. As to lessors of minerals, see Act of 1922, s. 26, *supra*, p. 58.

(*f*) *North British and Mercantile, &c.* v. *Easson* (1919), 7 Tax C. 463.

(*g*) *Vide supra*, pp. 116 *sqq.*

than would have been paid if the profits had been charged under Case I. of Schedule D (*h*). It is submitted that the word "paid" in this proviso means "ultimately paid out of the funds of the company," and that the tax which was paid or which would have been paid by the company in the first instance, and recouped by deduction against the recipients of interest, &c., must be left out of the account. In a Scottish case, where this point does not appear to have been raised, it was held that, in applying the proviso to the case of a company owning lands, the rents of those lands must be included in order to ascertain the profits that would have been charged under Case I. of Schedule D (*i*).

The relief is confined to assurance companies (*k*) carrying on life assurance business; to companies whose business consists mainly in the making of investments, and the principal part of whose income is derived therefrom (*l*); and to "any savings bank or other bank for savings" (*m*).

The expenses of management on which repayment can be claimed are reduced in the case of an assurance company by the amount of any fines, fees, or profits arising from reversions; (against such profits may be set off any loss arising from reversions in any previous year from April 6th, 1915, onwards) (*n*); by the amount of the expenses attributable to management of any income of the foreign life assurance fund relieved from tax (*o*); and by the amount of any

(*h*) Sect. 33 (1), proviso (a).

(*i*) *Rosyth Building and Estates Co., Ltd.* v. *Rogers* (1921), 58 S. L. R. 363; 8 Tax C. 11; *supra,* p. 140; if the feu duties and interest on bonds had been left out of the Schedule D account, the difference in result between the Crown's and the company's calculations would have been trifling.

(*k*) Including mutual assurance companies, Act of 1923, s. 16 (4), *infra,* p. 561.

(*l*) Companies of this class are referred to *supra,* pp. 81, 87. In *Rosyth Building, &c. Co., Ltd.* v. *Rogers, supra,* it was common ground that the company answered this description. As to owners of mineral royalties, *vide supra,* p. 58.

(*m*) Other exemptions for certain kinds of savings banks are created by sect. 39 (3) (a) (b), *vide supra,* p. 209.

(*n*) Sect. 33 (1), provisos (b), (c); the first enactment granting this relief is sect. 14 (1) of the Finance Act, 1915 (5 & 6 Geo. 5, c. 62), which applies to the tax for the year beginning on that date.

(*o*) Sect. 33 (5); this appears to refer to the relief in respect of certain war loan securities given by sect. 46 (2), (3), *vide supra,* p. 75.

profits arising from the granting of annuities on human life (*p*). Where the assurance company has not its head office in the United Kingdom, the relief given corresponds with expenses of management of that portion only of the income of its life assurance fund on which it pays tax (*q*). These provisions are to be applied separately to the ordinary, and the industrial, life assurance business carried on by the same company (*r*). A loss on exchange due to the payment of coupons abroad does not form part of expenses of management (*s*).

In the case of any other company than an assurance company, or of any such bank, the expenses of management are reduced by the amount of any income or profits derived from sources not charged to tax (*t*).

Note that in all these cases it is the whole amount of the profits from reversions or the profits not charged to tax that has to be deducted; and not merely the proportion of the expenses which is attributable to the management of the source from which those profits are derived.

Any expenses (connected with repairs, maintenance, insurance, or management of land) for which relief can be claimed under Schedule A, No. V., Rules 7, 8 (*u*) must also be deducted in either case (*x*).

The claim must be made to the Special Commissioners. It must be made by notice in writing to the surveyor (which must state particulars) within twelve months after the expiration of the year of assessment to which it

(*p*) Finance Act, 1923, s. 16 (2); the sub-section provides the manner in which such profits are to be computed for this purpose.

(*q*) Act of 1918, s. 33 (4); a provision for assessment on a portion only of its income is contained in Case III. of Sched. D, *vide supra*, p. 211, note (*y*); as regards that portion, the relief is subject to the same limitations as that given to a company which has its head office in this country: *Equitable Life, &c. of U.S.A.* v. *Hills* (1924), 8 Tax C. 657, *supra*, p. 211.

(*r*) Act of 1923, s. 16 (3), *infra*, p. 561.

(*s*) *Bennett* v. *Underground Electric, Ltd.*, [1923] 2 K. B. 535.

(*t*) Act of 1918, s. 33 (1), proviso (b); instances of income or profits not charged will be found in sect. 39 (3) (a), (b), *vide supra*, p. 209.

(*u*) *Vide supra*, p. 42.

(*x*) Sect. 33 (3).

relates (*y*). The facts, including the fact that tax has been paid by deduction (*z*) or otherwise, and not assessed under Case I. of Schedule D, must be proved to the satisfaction of the Special Commissioners (*a*); if the surveyor objects to the claim, it is heard as if it were an appeal, and a case may be stated for the High Court (*b*).

Tithes and other Profits from Lands.

The miscellaneous profits transferred to Case III. from No. II. of Schedule A have been enumerated above (*c*). They will be assessed in general on the profits of the preceding year, subject to different rules as to the first and the second year in which the profits arise (*d*); but in computing those profits the "like deductions and allowances shall be made" as under No. II. of Schedule A (*e*). As regards tithes and teinds, dues, &c. in right of the Church or by endowment or in lieu of tithes, tithes compounded for, and rents and other money payments in lieu of them, a deduction for necessary costs of collection must be allowed (*f*). Deductions are also allowed in respect of local rates (*g*), of tenths, first fruits, &c., procurations and synodals (*h*), and of the repairs of any collegiate church or chapel, or of the chancel of any church, where the recipient is bound to repair (*i*). Certain deductions are allowed generally from the profits of clergymen and ministers of any religious denomination (*j*).

(*y*) Sect. 33 (2); this contrasts with the more general limitation of six years contained in sect. 41, *infra*, p. 420, as amended by Finance Act, 1923, s. 30 (1), *infra*, p. 570.

(*z*) *Vide supra*, pp. 182 *sqq*.

(*a*) Sect. 33 (1).

(*b*) Sect. 33 (2); as to appeal and case stated, see Chap. XVII.

(*c*) See p. 175, *supra*.

(*d*) Case III. r. 2 (1); see "Basis of Assessment," *supra*, p. 176; but sect. 30 of the Act of 1927 does not appear to apply, these profits not being chargeable under Rule 1 of Case III.

(*e*) Act of 1926, s. 28 and 3rd Sched., *infra*, pp. 579, 587.

(*f*) *Stevens* v. *Bishop* (1887), 19 Q. B. D. 442, see especially per A. L. SMITH, J., at p. 444; 20 Q. B. D. 442. A tithe rentcharge under the Tithe Act, 1836, is still assessed under No. I. of Sched. A, *vide supra*, p. 62. No allowance for tenant's profits is admissible under No. II. or under Sched. D.

(*g*) Sched. A, No. V. r. 1 (d); No. VII. r. 7, *infra*, pp. 479, 485.

(*h*) No. V. r. 1 (a), (b).

(*i*) No. V. r. 1 (c).

(*j*) General Rules, r. 2, *infra*, p. 517.

In the case of manors and other royalties (*k*), a deduction for the costs incurred in collection has been refused, on the ground that such costs were not admitted to be necessary (*l*). It is submitted that this decision cannot be good law, or that the necessity for such costs can in almost every case be proved, for it is inherent in the nature of profits that the cost of obtaining them should be excluded (*m*).

The profits of fines charged by Rule 6 of No. II. are subject to a deduction for any part of the money applied as capital productive of taxable income (*n*), which appears to be discretionary on the part of the Commissioners, and not to be claimable as of right; the deduction cannot be made where the money is merely placed on temporary deposit in a bank (*o*).

Deduction of Tax.

The tax in respect of these miscellaneous profits is charged on the persons or bodies receiving or entitled to the income (*p*). But as regards tithes arising from lands, teind duty, or any other of these profits which is an annual payment reserved or charged upon any lands, a landlord, owner or proprietor who has paid or borne tax under Schedule A in respect of the lands has the right to deduct tax in making the payments, at the standard rate in force for the year in which the payments are due (*q*). The effect of vesting in Queen Anne's Bounty under the Tithe Act, 1925, has been stated above (*r*).

(*k*) That is, royalties of a manorial nature, not ordinary mineral royalties or royalties on patents or copyrights; see note (*h*), *supra*, p. 175.

(*l*) *Duke of Norfolk* v. *Lamarque* (1890), 24 Q. B. D. 485; *Stevens* v. *Bishop*, *supra*, p. 62, was distinguished on that ground.

(*m*) *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, [1915] A. C. 433, *supra*, p. 117; *Stevens* v. *Bishop*, *supra*.

(*n*) Sched. A, No. II. r. 6, proviso, *infra*, p. 474, preserved by Act of 1926, s. 38 and 3rd Sched.

(*o*) *Lord Mostyn* v. *London*, [1895] 1 Q. B. 170.

(*p*) Sched. D, Misc. Rules, r. 1, *infra*, p. 510. The specific directions on this matter in Rules 4, 5, 6 and 7 of No. II. of Sched. A are not preserved by s. 28 or the 3rd Sched. to the Act of 1927, and are no longer applicable.

(*q*) Sched. A, No. VIII. r. 4, *infra*, p. 487, read with Act of 1927, s. 39 (1), *infra*, p. 599. See Rules 1, 2, 3 of No. II., *supra*, p. 175. Manorial dues and fines, so far as these still accrue (*vide supra*, p. 175, note (*i*)), are not "annual payments."

(*r*) See Chap. II., *supra*, p. 63.

Moreover, it is submitted that, since the transfer to Schedule D, Rules 19 and 21 of the General Rules are applicable not only to the above payments which are charged with tax by Rules 1, 2 and 3 of No. II., but also to the other profits arising from lands which are charged by Rule 7; so that the payer is entitled to deduct tax in making the payment, under Rule 19 if he makes it wholly out of profits or gains brought into charge, and under Rule 21 if he does not; and that, in the former case, no assessment can be made on the payee (*rr*). As to the other profits covered by Rule 7 of No. II., however, it was held (*s*) that a dead rent paid in respect of minerals not yet won was not an annuity or other annual payment within sect. 102 of the Act of 1842 (*t*), but it has since been laid down that the annual payment intended by Rules 19 and 21 need not be in its nature comparable to an annuity or to yearly interest on money (*u*), and this appears to overrule the ground of the decision on this point in *Hill* v. *Gregory;* at any rate, it is submitted that that decision is inapplicable after the transfer of these profits to Schedule D. The phrase in Rule 19 "payable wholly out of profits or gains brought into charge" applies to an annual payment made out of the profits of the property in lands charged under No. I. of Schedule A (*v*); and also, it would appear, to an annual payment made out of the profits of the occupation of land assessed under Schedule B (*w*).

(*rr*) Rules 19 and 21 and their consequences are dealt with at length, *supra,* pp. 182, 186, pp. 193—201.

(*s*) *Hill* v. *Gregory,* [1912] 2 K. B. 70, *supra,* p. 175.

(*t*) This provision is replaced by General Rule 19.

(*u*) *R.* v. *Special Commissioners, Ex parte Shaftesbury Homes,* [1923] 1 K. B. 393 (C. A.), decided on the phrase "yearly interest or other annual payment" in sect. 37 (1) (b) of the Act of 1918, *infra,* p. 291.

(*v*) *London County Council* v. *A.-G.,* [1901] A. C. 26; see p. 197, *supra.* See Chap. II.

(*w*) See Chap. III.

CHAPTER VIII.

INCOME FROM FOREIGN SECURITIES AND OTHER FOREIGN POSSESSIONS: SCHEDULE D, CASES IV. AND V.

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Scope of Cases IV. and V.

LIKE the other cases of Schedule D, Cases IV. and V. are subject to the opening rule of Schedule D. By this rule the tax is charged upon the annual profits accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and from any trade or profession whether carried on in the United Kingdom or elsewhere (*a*). It is also charged upon all interest of money, annuities and other annual payments not charged under Schedules A, B, C or E (*b*), without specifying the country from which such interest, &c. originates, or in which it is paid.

Under Cases IV. and V. the tax is charged upon the income arising from three classes of property out of the United Kingdom; first, securities (*c*); secondly, stocks, shares and rents (*d*); thirdly, any other possessions (*e*).

(*a*) Sched. D, 1 (a), (i), (ii), *infra*, p. 497.

(*b*) Sched. D, 1 (b), *infra*, p. 497.

(*c*) Except interest, &c. payable out of public revenues, and charged under Sched. C; Sched. D, 2, Case IV., *infra*, p. 498; Case IV. rr. 1, 2, *infra*, p. 508.

(*d*) Sched. D, 2, Case V., *infra*, p. 498; Case V. rr. 1, 3, *infra*, p. 509.

(*e*) Sched. D, 2, Case V.; Case V. r. 2.

With regard to the income from, first, securities, and secondly, stocks, shares and rents, it depends on the status of the recipient or on the distinction between residence and ordinary residence (*f*), whether the whole of the income is charged with the tax, or only that portion which is brought to the United Kingdom; that is to say, it depends on the recipient being a British subject, or being domiciled (*g*), or "residing" (*h*), or being "ordinarily resident" (*g*), in this country.

The following classes of persons are liable in respect of the whole income, whether it is brought to this country or not (*i*):—

individuals who are British subjects and are both domiciled and ordinarily resident in the United Kingdom;

individuals who are subjects of foreign States but are domiciled in the United Kingdom, wherever they ordinarily reside, provided that they have a residence in this country (*k*);

companies and other bodies residing (*h*) in this country, except assurance companies in respect of income arising from the investments of their foreign life assurance funds (*l*).

(*f*) *Vide infra*, p. 222.

(*g*) *Vide infra*, p. 221.

(*h*) For the meaning of this word as regards companies, see *Swedish Central Rail. Co., Ltd.* v. *Thompson*, [1925] A. C. 495; *Egyptian Delta Land, &c. Co.* v. *Todd*, [1929] A. C. 1, *supra*, pp. 90, 99; *infra*, p. 226; as regards individuals, see Chap. XII.

(*i*) Case IV. r. 1; Case V. r. 1, *infra*, p. 509; Rule 2 of Case IV. and Rule 3 of Case V. show the classes of persons to whom Rule 1 of either case does *not* apply. Under the Act of 1842, Sched. D, fourth and fifth cases, the income from foreign securities and possessions was taxable only so far as it was received in the United Kingdom; the rules of these cases, which now provide for payment by certain classes of persons on the whole income, were introduced by sect. 5 of the Finance Act, 1914 (4 & 5 Geo. 5, c. 10); as to possessions other than securities, stocks, shares, or rents, the decision in *Colquhoun* v. *Brooks*, *infra*, p. 229, was, however, left undisturbed.

(*k*) Sched. D, 1 (a), referred to at the head of this chapter.

(*l*) "Assurance company," and "foreign life assurance fund," are defined in sect. 237, *infra*, p. 471. As to war loan securities forming part of the investments of such a fund, see sect. 46 (2), (3), *supra*, p. 75.

The following classes are liable in respect only of that portion of the income brought to this country (*m*):—

individuals who are British subjects but are not domiciled in the United Kingdom, although they may have a residence here;

individuals who are British subjects domiciled in the United Kingdom, but are not ordinarily resident here;

individuals who are subjects of foreign States, and are not domiciled in the United Kingdom, although they may have a residence here (*n*);

assurance companies in respect of income arising from the investments of their foreign life assurance funds (*o*).

Persons who are not in any sense "residing" in the United Kingdom are not liable in respect of any of the income described in Cases IV. and V., whether it is brought to this country or not (*p*), and an individual who was the subject of a foreign State and was neither domiciled nor resident in this country has been held not to be liable in respect of income not brought to this country, although the income was derived from trust funds and the trustees were domiciled and resident in the United Kingdom; neither were the trustees chargeable (*q*).

The income of a person residing in this country from possessions out of the United Kingdom (other than securities or stocks, shares and rents) is charged only to the extent to which it is received in this country (*r*). But if his income is

(*m*) Case IV. r. 2; Case V. r. 3.

(*n*) Cf. *I. R.* v. *Cadwalader* (1904), 7 F. 146; 5 Tax C. 101; *Loewenstein* v. *de Salis* (1926), 10 Tax C. 424, and other cases cited *infra*, p. 271.

(*o*) See note (*l*), previous page.

(*p*) Such persons are not within the scope of Sched. D, 1 (a), (i), (ii), *infra*, p. 497. Thus, a company not residing in this country is not taxable in respect of interest on mortgages or rents of land in Egypt: *Todd* v. *Egyptian Delta, &c. Co.*, *supra*. But a wife is liable who is residing separately in this country: *Derry* v. *I. R.*, [1927] S. C. 714, *infra*, p. 279.

(*q*) *Williams* v. *Singer; Pool* v. *Royal Exchange, &c.*, [1921] 1 A. C. 65.

(*r*) Case V. r. 2, *infra*, p. 509; as to what constitutes receipt in this country, *vide infra*, p. 232.

derived from a trust fund outside the United Kingdom, he is taxable on the whole income from such part of the fund as consists of securities, stocks, shares or rents, and as to the income from the remainder of the fund only to the extent to which it is received in this country (*s*).

Provisions have been enacted giving some relief from United Kingdom income tax in cases where income tax has already been paid or borne in any British Dominion (*t*).

A person who is in the United Kingdom "for some temporary purpose only, and not with any view or intent of establishing his residence therein," and has not resided in this country for six months in any year of assessment, is not to be charged in respect of securities or other possessions out of the United Kingdom; but if he resides for six months or more in the year, he is chargeable in that year to the extent allowed by Cases IV. and V., whether his purpose is permanent or temporary (*u*).

The option of the Crown to tax under these cases assurance or investment companies who hold foreign securities or possessions in the course of their business, instead of including the income therefrom in the profits of their trade, has been considered in connection with Case I. (*v*).

"Domiciled": "Ordinarily resident."

The amount of an individual's liability in respect of income from securities and from stocks, shares and rents, may, as has been seen, depend on whether he is "domiciled," or whether, being a British subject, he is "ordinarily resident" in the United Kingdom. The law of domicil in general applies for income tax purposes; and there is no decision in which its principles have been discussed at any length in their specific application to income tax law, though

(*s*) *Baker* v. *Archer-Shee*, [1927] A. C. 844; for subsequent proceedings in this case, see 7 A. T. C. 550.

(*t*) Finance Act, 1920, s. 27, *infra*, p. 534; see Chap. I., p. 25.

(*u*) Sched. D, Misc. Rules, r. 2, *infra*, p. 510; see Chap. XII., p. 272.

(*v*) See Chap. V., *supra*, pp. 111, 112.

the subject is glanced at in some of the cases decided upon questions of residence (*w*).

"A man can have residences in more countries than one, although he can only have one domicile" (*x*). And the mere fact of a man possessing a residence in the United Kingdom may make him liable to income tax, although he may not have visited this country within the year of assessment (*y*). Such a fact taken by itself is, perhaps, not sufficient to make a British subject (though domiciled in the United Kingdom) liable to pay tax on the whole of his income from securities, stocks, shares and rents. But, on the other hand, the possession of a residence is not essential in order to make him both "resident" and "ordinarily resident." Indeed, there appears now to be little effective difference between those terms for income tax purposes (*z*). "Ordinary residence connotes residence with some degree of continuity and apart from accidental or temporary absences" (*a*). "The converse to 'ordinarily' is 'extraordinarily,' and part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not 'extraordinary'" (*b*); an individual, therefore, is "ordinarily resident" who resorts to this country at monthly intervals, to discharge his duties as director of an English company, though each visit is a short one (*c*); or who spends several months every year in England for personal and family reasons (*d*) in these cases the visitors stayed mainly in hotels. The case for "ordinary residence" is still stronger where a person owns a house in this country and spends nearly half the year in this country (*e*).

(*w*) These cases are discussed *infra*, p. 270.

(*x*) Per Lord President ROBERTSON, in *I. R.* v. *Cadwalader* (1904), 7 F. 146; 5 Tax C. at p. 107.

(*y*) See *Rogers* v. *I. R.* (1879), 6 R. 1109, and the other cases cited therewith, *infra*, p. 271.

(*z*) The phrases "ordinary residence," "ordinarily resides," occur also in Sched. D, Misc. Rules, r. 4, *infra*, p. 510, and General Rules, r. 3, *infra*, p. 517; Sched. E, r. 18 (5), *infra*, p. 517.

(*a*) *Levene* v. *I. R.*, [1928] A. C. 217, per Lord CAVE, L.C., at p. 225.

(*b*) *Lysaght* v. *I. R.*, *ibid.* 234, per Lord SUMNER at p. 243.

(*c*) *Lysaght's* case, *supra*.

(*d*) *Levene's* case, *supra*; *Reid* v. *I. R.*, [1926] S. C. 589; 10 Tax C. 673.

(*e*) *Peel* v. *I. R.*, [1928] S. C. 205; 13 Tax C. 443. The above cases are again referred to *infra*, p. 272.

On questions of domicil and ordinary residence arising under these rules there is an appeal to the Special Commissioners, who may be required to state a case on a point of law for the High Court (*f*).

Ownership of the Assets Immaterial.

In order to make a person chargeable under Case V., it is not necessary that he should own the corpus of the foreign possession. Income derived from assets in a place out of the United Kingdom may be a foreign possession, although it accrues to a person who does not own those assets. Therefore where the assets were vested in trustees under a will, who at their discretion made remittances out of the income for the education and maintenance of minors residing in this country, that income was held to be a foreign possession and to be properly charged under Case V.; as soon as the trustees had exercised their discretion (even if before that time the children's interest was only contingent), the income became the income of the children (*g*).

It appears to be true also of income arising from securities that ownership of the assets is not necessary to make a person liable under Case IV. (*h*). And it follows that the question whether the whole income is taxed or only the part received in this country, depends on the status of the recipient of the income, not of the owner of the assets (*i*).

Computation of Income Taxable.

It has been seen above that in certain circumstances tax is charged on the whole of the profits, and in others only on the portion brought to this country. The provisions for computing the amount of assessment apply, therefore, according to those varying circumstances, either to the whole of the income, or to the amount received in this country, in

(*f*) Act of 1924, s. 27, *infra*, p. 569.

(*g*) *Drummond* v. *Collins*, [1915] A. C. 1011, *infra*, p. 235. But see *Baker* v. *Archer-Shee*, *supra*, p. 221.

(*h*) See the case last cited.

(*i*) Cf. *Williams* v. *Singer*, *infra*, p. 235.

the respective years referred to (*k*). The tax is in general to be computed on the income or amount received in this country in the year preceding the year of assessment (*l*). But in the first and the second years of assessment in which the income arises, or an amount is received in this country, the tax is to be computed on the income or receipts of the year of assessment itself (*m*); unless the income first arose, or an amount was first received in this country, on the 6th April in the first year, in which case the tax for the second year is computed on the income or the receipts in the first year, but the person charged is entitled, on giving the notice indicated, to have it computed on the income or the receipts of the second year (*n*). A similar notice, if the first year of assessment was a broken year, will entitle him to have the tax computed on the income or the receipts of the third year (*n*). In a year of assessment in which a source of income is newly acquired or added to, tax in respect of that source or addition is to be computed separately (*o*).

Where any person ceases during the year of assessment to possess a particular source of income (or part of such a source), the tax is computed upon the income, or the receipts in this country, from 6th April to the date on which possession ceased (*p*).

Apart from the new acquisition, or the cesser, of any source of income charged under Case IV. or Case V., the whole of the profits or income in respect of which any person is chargeable under either of these cases may be assessed and charged in one aggregate sum (*q*).

(*k*) See Act of 1926, s. 29 (1) and proviso (b) (iv), *infra*, p. 579.

(*l*) Act of 1926, s. 29 (1). With the provisions of this sub-section and of its proviso (b), cf. those of Rule 2 of Case III., *supra*, p. 177. They render inapplicable the decision on the provisions previously in force in *Ormond Investment Co.* v. *Betts*, [1928] A. C. 143.

(*m*) Proviso (b) (i), (ii).

(*n*) Proviso (b) (iii).

(*o*) S. 30, proviso (ii), *infra*, p. 581.

(*p*) S. 30, proviso (i), read with s. 31; note the provision for retrospective assessment in s. 31 (1) (b): cf. *supra*, p. 177.

(*q*) S. 30, substantive paragraph; but this does not authorize the aggregation of income from foreign "securities" (see below) with income chargeable under Case V.

The above provisions, so far as they provide for assessment on the income, or the receipts in this country, of an earlier year are applicable although no income is derived, or received in this country, from the source in the year of assessment (*r*); but if the source is not possessed at any time during the year, there is no liability to tax.

If a sum has been received in this country in the year according to which the income is computed, the fact that it may have been received and have accumulated abroad in previous years is immaterial (*rr*).

A sleeping partnership in a firm and a holding of shares in a limited company in the same Dominion are separate sources of income taxable under Case V., although both are held by the same set of trustees (*s*). If both such sources are held throughout a year of assessment, the holder will be assessable on the aggregate profits from both in the preceding year (*t*); the fact of their being separate, however, affects the computation, as above stated, where one source or the other is acquired or discontinued.

Securities.

The following passage indicates the meaning of the word "securities" in the Income Tax Acts:—

"The word denotes a debt or claim the payment of which is in some way secured. The security would generally consist of a right to resort to some fund or property for payment; but I am not prepared to say that other forms of security (such as a personal guarantee) are excluded. In each case, however, where the word is used in its normal sense, some form of secured liability is postulated. No

(*r*) Act of 1926, s. 22, *infra*, p. 577, which gets rid of the decision in *Whelan* v. *Henning*, [1926] A. C. 293; see also p. 5, *supra*.

(*rr*) See p. 235, note (*h*); contrast *Simpson* v. *Maurice's Exors.* (1929), 45 T. L. R. 581.

(*s*) *I. R.* v. *Drysdale's Trees.* (1928), 13 Tax C. 565; other instances of what constitute separate sources of income will be found in the cases decided on War Stocks under Case III., *supra*, p. 210.

(*t*) S. 30, *supra*, p. 224; *I. R.* v. *Drysdale's Trees.* was decided with regard to a year to which ss. 22 and 30 of the Act of 1926 did not apply.

doubt the meaning of the word may be enlarged by an interpretation clause contained in a statute . . . or the context may show, as in certain cases relating to the construction of wills, that the word is used to denote, in addition to securities in the ordinary sense, other investments such as stocks or shares. But in the absence of any such aid to interpretation, I think it clear that the word 'securities' must be construed in the sense above defined, and accordingly does not include shares or stock in a company" (*u*).

Accordingly, an agreement by a foreign company to repay a loan with interest to a creditor in the United Kingdom, who holds no mortgage or collateral security, but only certain negotiable promissory notes, and who can have recourse only to the direct personal responsibility of the debtor in order to enforce the agreement, is not a foreign security, and the interest is not chargeable under Case IV., but only on the amount received in this country, under Rule 2 of Case V. (*x*).

An investment company residing in this country is taxable under Case IV. on the interest of money lent on the security of land, or of debentures secured by mortgages of land, in a foreign country, although such lending forms part of the company's trade (*y*); but if such a company is not resident in the United Kingdom it is not taxable on income from such a source (*z*).

(*u*) *Singer* v. *Williams,* [1921] 1 A. C. per Viscount CAVE, at p. 49.

(*x*) *Lord Manton's Trees.* v. *Steele* (1927), 11 Tax C. 549; from the judgments of ROWLATT, J., at p. 556, and Lord HANWORTH, M.R., at p. 559, it appears that the decision to the contrary in *Hudson's Bay Co.* v. *Thew,* [1919] 2 K. B. 632 (where the agreement was under seal) is not correct.

(*y*) *Scottish Mortgage Co. of New Mexico* v. *McKelvie* (1886), 2 Tax C. 165, *infra,* p. 234, where the trade profits (as such) were taxable under Case I.; *Butler* v. *Mortgage Co. of Egypt* (1928), 139 L. T. 29, where they were taxable under Case V. r. 2, as income from a foreign possession. The Crown's option to decide under which case it shall assess the tax is considered *supra,* p. 111.

(*z*) *Egyptian Delta Land and Investment Co., Ltd.* v. *Todd,* [1929] A. C. 1, *supra,* p. 94.

Stocks, Shares and Rents.

Shares in a trading company are not securities (*a*). But it will depend on the circumstances indicated above (*b*) in what cases the whole income is taxable, and in what cases only the receipts in the United Kingdom.

The income from stocks or shares in a company is only assessable under Case V. if the stocks or shares are "in any place out of the United Kingdom." "The question therefore arises whether their locality is to be determined by the company's place of incorporation and registration or by its place of residence and trading. . . . . The latter is the true view. 'Shares in a company,' said Sir JAMES HANNEN in *In the Goods of Ewing* (*c*), 'are locally situate where the head office is'; and I think this means that they are locally situate where the company's principal place of business is to be found. A share or a parcel of stock is an incorporeal thing, carrying the right to a share in the profits of a company; and where the company is, there the share is also, and there is the source of any dividend paid upon it" (*d*). "The Crown has argued that the share is necessarily a possession in the place where the incorporation is incorporated. For the purposes of the Income Tax Acts, and in a case where the foreign corporation is resident here, the proposition is unsound. . . . . The company when resident here is not foreign . . . . and its capital and the members' interest in the capital is not foreign" (*e*).

Accordingly, while a company registered in England (*f*) controlled and managed in this country the business of an American company, the American company being therefore

(*a*) *Bartholomay Brewing Co.* v. *Wyatt,* [1893] 2 Q. B. 499, *supra,* p. 101; *Gramophone and Typewriter, Ltd.* v. *Stanley,* [1908] 2 K. B. 89, *supra,* p. 102, per FLETCHER MOULTON, L.J., at p. 104; *Singer* v. *Williams,* [1921] 1 A. C. 41.

(*b*) See p. 219.

(*c*) (1881), 6 P. D. 19, at p. 23.

(*d*) *Bradbury* v. *English Sewing Cotton Co.,* [1923] A. C. 744, per Lord CAVE, L.C., at p. 753; see *Swedish Central Rail. Co.* v. *Thompson, infra,* [1925] A. C. at p. 504, and *Baelz* v. *Public Trustee,* [1926] 1 Ch. 863, 869.

(*e*) [1923] A. C. per Lord WRENBURY at p. 767.

(*f*) See *American Thread Co.* v. *Joyce* (1913), 6 Tax C. 1, 163, *supra,* p. 97.

resident in England, the stock held by the English in the American company was not a foreign possession; and although the management and control of the business of the American company were subsequently transferred to America, and the stock then became a foreign possession, the dividends on that stock received by the English company before the transfer could not be brought into average (*g*).

A rent is situate abroad if the land is situate, and the rent is paid, in a foreign country; and a company which is resident here is taxable under Case V., rule 1, in respect of the whole of the rent, although the management of its business—including the receipt of such a rent—are carried on abroad (*h*). On the other hand, a company which, though registered in this country, is not resident here is not taxable in respect of any part of the rent of land in a foreign country (*i*).

Deductions and Allowances.

Where in the case of securities, stocks, shares or rents, the charge is upon the full amount of the income whether received in the United Kingdom or not, the persons liable to tax are entitled to receive deductions and allowances (*k*), as if the income had arisen wholly in this country (*l*). Moreover, a deduction is allowed of any sum paid as income tax in the place where the income has arisen, to the extent to which that payment has been made in respect of income not received in the United Kingdom; as to any part which is received in this country, there is no deduction for income tax, whether levied in a British possession

(*g*) *Bradbury* v. *English Sewing Cotton Co., supra;* the decision in this case is not inconsistent with that in *Brassard* v. *Smith,* [1925] A. C. 371, see per Lord DUNEDIN in *Swedish Central Rail. Co., Ltd.* v. *Thompson, infra;* and see *Baelz* v. *Public Trustee, supra.*

(*h*) *Swedish Central Rail. Co.* v. *Thompson,* [1925] A. C. 495, *supra,* p. 99.

(*i*) *Egyptian Delta Land, &c. Co.* v. *Todd,* [1929] A. C. 1, *supra.* The results stated in the text followed naturally from the decisions in the two cases last cited on the "residence" of the companies, which are considered in Chap. V., pp. 91, 99. The writer has not attempted to reconcile them.

(*k*) As to allowances and deductions in favour of individuals, *vide supra,* pp. 11 *sqq.;* in favour of assurance companies, *vide* pp. 212—215.

(*l*) Case IV. r. 1, *infra,* p. 508.

or protectorate (*a*) or elsewhere; indeed, an addition must be made for any income tax paid or borne outside the United Kingdom (*b*).

Where any "annual interest," "annuity," "or other annual payment" (*c*) is payable to a person not resident in the United Kingdom out of that part of the income which is not brought to this country, the amount of such payment is excluded from charge; but if the payment, though made to a resident abroad, is made out of money brought to this country, or if it is made to a resident in this country, there is no deduction on this account from the assessment (*d*).

What has been said above as to income tax in respect of that part of the income received in this country where the whole is taxable, applies also where only what is received here is taxable.

Possessions other than Stocks, Shares or Rents.

Apart from stocks, shares and rents, the most important kind of "income arising from possessions out of the United Kingdom" which is charged under Case V., is the profits of a trade or of an interest in a trade, which is owned by an individual (*e*) or a company (*f*) residing in the United Kingdom, but which is in no sense carried on in this country. The tax in such a case is charged, not on the whole income, but on the actual sums annually received in this country (*g*). In estimating the income there is no

(*a*) Finance Act, 1920, s. 27 (4); *supra*, p. 28.

(*b*) *Ibid.*; and cf. *Samuel* v. *I. R.*, *infra*, p. 314.

(*c*) As to the meaning of these expressions, *vide supra*, pp. 182, 186.

(*d*) The payer is in general entitled in making the payment to deduct income tax on the amount paid, *vide supra*, pp. 182 *sqq*.

(*e*) *Colquhoun* v. *Brooks* (1889), 14 A. C. 493, *supra*, pp. 92—94. The effect of this decision is unaltered by the present form of Case V.

(*f*) *Bartholomay Brewing Co.* v. *Wyatt*; *Nobel Dynamite Trust Co.* v. *Wyatt*, [1893] 2 Q. B. 499, *supra*, p. 101; *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89; *supra*, p. 102; *Mitchell* v. *Egyptian Hotels, Ltd.*, [1915] A. C. 1022; as to the residence of companies in the United Kingdom, *vide supra*, p. 90.

(*g*) Case V. r. 2, *infra*, p. 509; *Bradbury* v. *English Sewing Cotton Co.*, *supra*, p. 228. As to the year whose profits are to be taken, and so on, see "Computation of Income Taxable," *supra*, p. 223.

deduction for Dominion income tax; on the contrary, an addition is made equivalent to the amount of income tax borne or paid in the Dominion (*h*).

"'Possessions' is a wide expression, it is not a word with any technical meaning; the Act supplies no interpretation of it. I cannot see why it may not fitly be interpreted as relating to all that is possessed in Her Majesty's dominions out of the United Kingdom or in foreign countries and which is a source of income. And if so I do not think any violence would be done to the language if it were held to include the interest which a person in this country possesses in a business carried on elsewhere" (*i*). "The word 'possessions' is not a technical word. It seems to me that it is the widest and most comprehensive word that could be used" (*k*).

Where the "head and seat and directing power" of a trade (whether owned by an individual or a company) are situate in this country, the whole of its profits are charged with income tax under Case I. of Schedule D, even though a part (possibly the greater part) of its trading operations is situate abroad (*l*). Such a trade is not a foreign possession of the company (*m*).

But if an individual resident in the United Kingdom is a partner in a business carried on wholly in Australia, and takes no share in its management, he is liable to tax only in respect of that part of the profits which he receives in this country (*n*). Where a company is registered in England, but its trading operations are situate abroad, and it exercises no directing power over them, but confides that power to a local board of directors in the country where the

(*h*) Finance Act, 1920, s. 27 (4); as to relief in such cases, *vide supra*, p. 28.

(*i*) *Colquhoun* v. *Brooks*, 14 A. C., per Lord HERSCHELL at p. 508.

(*k*) Per Lord MACNAGHTEN, 14 A. C., at p. 516; see also *Foulsham* v. *Pickles*, [1925] A. C. 458, *infra*, p. 231.

(*l*) *Cesena Sulphur Co.* v. *Nicholson* (1876), 1 Ex. D. 428; *Imperial Continental Gas Assn.* v. *Nicholson* (1877), 1 Tax C. 138; *San Paulo Brazilian Rail. Co.* v. *Carter*, [1896] A. C. 31; *Ogilvie* v. *Kitton*, [1908] S. C. 1003; 5 Tax C. 338; *supra*, pp. 92, 95, and the other cases cited therewith. See also *Swedish Central Rail. Co.* v. *Thompson; Egyptian Delta, &c. Co.* v. *Todd*, *supra*, p. 228.

(*m*) *San Paulo (Brazilian) Rail. Co.* v. *Carter*, *supra; Bradbury* v. *English Sewing Cotton Co., Ltd.*, *supra*, p. 228, note (*g*).

(*n*) *Colquhoun* v. *Brooks*, *supra*.

trading operations are situate, that company is charged (on the income of any foreign possession other than securities, stocks, shares or rents) under rule 2 of Case V., and is liable only to pay tax on so much of the profits as is brought to this country (*o*). If, on the other hand, a company "resident" in England holds a rent in a foreign country (although the control and management of its business are also in that country) (*p*), or holds shares in a foreign company which carries on operations abroad (*q*), it is chargeable under rule 1 of Case V. on the whole of the profits.

The question where the directing power is situate must for this purpose be decided upon the facts of the year of assessment only; the course of business in other years is immaterial (*r*).

There is no deduction for expenses of distribution of income by trustees (*s*).

An office or employment, the duties of which are carried on wholly abroad, may be a "possession out of the United Kingdom," if the remuneration is paid in a foreign country (*t*), but not if the remuneration can only be claimed, and is in fact paid, in England (*u*).

Alimony paid under a divorce decree of a foreign Court to a person residing in this country is income from a foreign

(*o*) *Mitchell* v. *Egyptian Hotels, Ltd., supra,* note (*f*). The distinction between Case I. and Case V. in this matter appears clearly in the passage cited from Lord SUMNER'S speech, *supra,* p. 94; as to the facts, *vide supra,* p. 98. If such a company holds securities, &c., it may be charged under Case IV.: *Butler* v. *Mortgage Co. of Egypt* (1928), 139 L. T. 29, *supra,* p. 226; and see note (*q*).

(*p*) *Swedish Central Rail. Co., Ltd.* v. *Thompson,* [1925] A. C. 495, *supra,* p. 99. Contrast *Egyptian Delta, &c. Co., Ltd.* v. *Todd,* [1929] A. C. 1, *supra,* p. 99.

(*q*) *Bartholomay Brewing Co.* v. *Wyatt; Gramophone and Typewriter, Ltd.* v. *Stanley; Bradbury* v. *English Sewing Cotton Co., supra; vide supra,* pp. 97, 101.

(*r*) *Mitchell* v. *Egyptian Hotels,* [1915] A. C., per Lord SUMNER at p. 1040; *Bradbury* v. *English Sewing Cotton Co., supra.*

(*s*) *Aikin* v. *Macdonald's Trustees, infra,* p. 236.

(*t*) *Fleming* v. *Wilkinson* (1925), 10 T. C. 416, following the opinions in the next case cited.

(*u*) *Foulsham* v. *Pickles,* [1925] A. C. 458. The profits of an office, employment or pension which is a foreign possession are still chargeable under Case V., r. 2, by virtue of the exception contained in s. 18 (1) of the Act of 1922, *infra,* p. 546.

possession (*v*). Compensation for war injuries paid monthly by a foreign Government may not be income at all (*w*).

Sums received in the United Kingdom.

As has been seen, certain classes of individuals, together with assurance companies in respect of income from investments of their foreign life assurance funds, are charged under Cases IV. and V. with tax only in respect of the sums received in the United Kingdom (*x*). And in respect of possessions other than securities, stocks, shares and rents (whoever the recipient of the income), the sums received in this country only are the subject of tax (*y*).

In the case of securities belonging to those individuals and companies, the tax is computed "on the full amount, so far as the same can be computed, of the sums which have been or will be received in the United Kingdom . . ." (*z*). In the case of stocks, shares and rents belonging to those individuals and companies, and of other possessions (to whomever belonging), it is computed on "the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account," and so forth (*zz*). The elaborate language employed in Case V. makes it clear that money arising and payable in this country is not a sum received in the United Kingdom as arising from a foreign possession for the purposes of Case V. (*a*); the same reasoning does not appear to apply to rule 2 of Case IV., but at any rate the use in that rule of the shorter expression cited shows that every form of receipt specified in Case V. is intended to be included in the purview of Case IV. (*b*). If

(*v*) *I. R.* v. *Anderström,* [1928] S. C. 224; 13 Tax C. 482.
(*w*) *Laird* v. *I. R.* (1928), Rating and Income Tax Newsp., Oct. 6.
(*x*) Case IV. r. 2; Case V. rr. 3, 2.
(*y*) Case V. r. 2.
(*z*) Case IV. r. 2, *infra,* p. 508.
(*zz*) Case V. r. 2.
(*a*) *Foulsham* v. *Pickles,* [1925] A. C. 458, *supra,* p. 231.
(*b*) The rules of the corresponding fourth and fifth cases of the Act of 1842 differ in a somewhat similar way; but the decisions next to be cited take little

the recipient of income from securities prefers to bring it to this country in the form of "property" rather than of "remittances," there appears to be no reason why he should not be taxed.

Apart from the case last cited, the principles determining what constitutes the receipt of sums in the United Kingdom have been laid down in a series of cases (*b*) which arose chiefly in connection with assurance and investment companies where the Crown had exercised its option to charge the tax under Case IV. or Case V. instead of Case I. (*c*).

"A sum of money may be received in more ways than one, *e.g.*, by the transfer of a coin or a negotiable instrument or other document which represents and produces coin, and is treated as such by business men. Even a settlement in account may be equivalent to a receipt of a sum of money, although no money may pass; and I am not myself prepared to say that what amongst business men is equivalent to a receipt of a sum of money is not a receipt within the meaning of the statute which your Lordships have to interpret. But to constitute a receipt of anything there must be a person to receive and a person from whom he receives, and something received by the former from the latter, and in this case that something must be a sum of money. A mere entry in an account which does not represent such a transaction does not prove any receipt, whatever else it may be worth" (*d*).

If, therefore, the sum is not actually brought to this country in any form, whether as a remittance or as credit, or as property (and is not treated by its recipient as having been so brought), the mere fact that the sum appears in the

account of this difference. They were pronounced before the distinction had been laid down between "securities" and "stocks and shares" which is indicated *supra*, p. 225, and though some of them were apparently decided under Case IV., they are of equal authority upon Case V.

(*b*) See previous note.

(*c*) These decisions have no bearing where the charge is made under Case I.: *Liverpool and London and Globe, &c.* v. *Bennett, supra*, p. 111; [1912] 2 K. B. at pp. 53, 60.

(*d*) *Gresham Life, &c.* v. *Bishop*, [1902] A. C. 287, per Lord LINDLEY at p. 296; *vide supra*, p. 112, note (*g*).

accounts of the company, is shown in the annual statements presented to the shareholders, and is taken into account in calculating the profit available for distribution or investment, does not constitute a receipt (or even a "constructive receipt") in the United Kingdom (*e*).

On the other hand, a company cannot by the form of its book-keeping defeat the right of the Crown to tax upon a sum which is actually brought to this country, or which, in order to save the expense of cross-remittances, is not actually brought here, but is, nevertheless, treated by the company as having been brought to this country. An investment company received money on account of interest by the hands of its agents in America; but it also borrowed money in this country on debentures for investment in America; instead, therefore, of bringing the interest-money home, and sending the whole of the borrowed money out, it allowed the actual sum received as interest to remain in America, and sent out so much less of the borrowed money, while retaining out of the borrowed money a sum equivalent to the interest that would otherwise have been sent home. This sum was held to have been received in this country; the company had in effect performed its remittances for itself (*f*). The money actually retained in this country was received in the shape of capital, but that fact was held to make no difference. Nor does it make any difference that remittances made to this country of interest on securities out of the United Kingdom are described by the company as repayments of money previously sent out of this country for investment; "the mere calling it capital will not make into capital that which is essentially and in truth profit—and

(*e*) *Forbes* v. *Scottish Provident, &c.; Forbes* v. *Scottish Widows, &c.* (1895), 23 R. 322; 3 Tax C. 443; *Standard Life, &c.* v. *Allan* (1901), 3 F. 805; 4 Tax C. 446; *Gresham Life, &c.* v. *Bishop, supra.* The last cited case impliedly overrules *Universal Life, &c.* v. *Bishop* (1899), 4 Tax C. 139.

(*f*) *Scottish Mortgage Co. of New Mexico* v. *McKelvie* (1886), 14 R. 98; 2 Tax C. 165, *supra,* p. 111. This decision is compatible with the general principle laid down in *Gresham Life, &c.* v. *Bishop, supra;* see *Scottish Widows, &c.* v. *Farmer, infra.*

a profit made by the interest received on the securities" (*g*). Again, if a company out of interest accumulated abroad purchases bearer bonds abroad, but brings them to this country and sells them here, the receipt of the proceeds of sale in this country constitutes a receipt of the interest in this country; it is immaterial that the interest accumulated before the year of computation, so long as the purchase price was received in that year (*h*).

The cutting of coupons from bearer bonds kept in this country does not constitute the receipt of a sum in the United Kingdom, if the coupons are sent abroad and presented for payment and the money is not remitted home, but allowed to remain abroad (*i*).

Assessment through Guardian or Trustee.

A guardian who receives income from foreign possessions (or securities) on behalf of children resident in this country is liable to pay tax on their behalf under Case V. (*k*) (or Case IV.). It is not necessary that the guardian should have control of the assets, if he in fact receives and controls the income (*k*).

Conversely, where the beneficiary who receives and controls the income from foreign securities or possessions is not resident in this country, the fact that the trustees in whom the assets are vested are resident here does not affect the liability to tax, or the amount of that liability. And if in such a case the beneficiary is not domiciled in the United Kingdom and no part of the income is received in this country, there is no liability to tax under Case IV. or Case V. (*l*). If any part of the income had been received

(*g*) *Scottish Provident, &c.* v. *Allan,* [1903] A. C. 129; see per Lord DAVEY at p. 137.

(*h*) *Scottish Provident, &c.* v. *Farmer,* [1912] S. C. 452; 6 Tax C. 34. See "Computation of Income Taxable," *supra,* p. 225.

(*i*) *Scottish Widows, &c.* v. *Farmer,* [1909] S. C. 1372; 5 Tax C. 502.

(*k*) *Drummond* v. *Collins,* [1915] A. C. 1011, *supra,* p. 223; as to assessment generally in the name of a guardian or trustee, *vide infra,* p. 274.

(*l*) *Williams* v. *Singer; Pool* v. *Royal Exchange, &c.,* [1921] 1 A. C. 65, *supra,* p. 220.

in this country, it would have been assessable in the name of the trustee (*m*).

Where the income from foreign possessions is received and distributed in this country by trustees, they cannot make any deduction for the expenses of managing and distributing the income (*n*).

(*m*) *Vide supra*, p. 223, and *infra*, p. 274.

(*n*) *Aikin* v. *Macdonald's Trustees* (1894), 22 R. 88; 3 Tax C. 306.

CHAPTER IX.

MISCELLANEOUS PROFITS: SCHEDULE D, CASE VI.

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Profits Chargeable under Case VI.

SCHEDULE D contains words which are intended to prevent any profits not specifically charged by any other Schedule from escaping taxation for that reason (*a*). Those words refer first to "interest of money and annuities" which (so far as not covered by Schedules C and E) are now charged by Case III. of Schedule D (*b*); next they refer to "all other annual profits or gains not charged" under any other Schedule; so far as these are "not falling under any of the foregoing Cases," I.—V. of Schedule D, they are charged under Case VI. (*c*).

In a case which raised a question of liability to tax in respect of casual profits, ROWLATT, J., said: "The word 'annual' here can only mean 'calculated in any one year,' and 'annual profits or gains' mean 'profits or gains in any one year or years as the succession of years comes round'" (*d*). If this be so, the presence of the word

(*a*) Sched. D, 1 (b), *infra*, p. 497.

(*b*) See Chap. VIII. and Case III. r. 1 (a), *infra*, p. 478; this includes annuities and yearly interest, and other matters which were not included by the second rule of the third case in Sched. D in the Act of 1842; such matters are therefore not now within the scope of Case VI.

(*c*) Sched. D, 1 (b), read with Case VI., *infra*, p. 498.

(*d*) *Ryall* v. *Hoare*, *infra*, p. 240, [1923] 2 K. B. at p. 455. This passage was approved by Lord CAVE, L.C., in *Martin* v. *Lowry*, *supra*, p. 80, [1927] A. C. at p. 316; but Lords SUMNER and CARSON, while accepting the decision in *Ryall* v. *Hoare* as correct, guarded themselves against appearing to agree with all the instances and observations of the learned judge.

"annual" affords little guidance as to the scope of Case VI.; but it is, at any rate, clear that that case is confined to income receipts and does not create a liability to tax in respect of an appreciation of capital (*e*). Accordingly, the difference between the price paid on the purchase of goods or property, and the price received on the sale of the goods or property, can only be taxed, if the purchase and sale are carried out in the course of a trade. Where a person engaged in the building trade as an employee had bought certain lands and houses at different times and had sold them for higher prices than he gave, he was not taxable under Case VI. in respect of the surplus (*f*). Nor was any tax so leviable where options for the purchase of two rubber estates had been acquired and sold together to a company (*g*). On the other hand, it has been held (*h*) that the receipts derived from a series of speculations in future delivery contracts of cotton were taxable under Case VI., where there was a finding that these did not constitute a trade. An award of a capital sum as compensation for war injuries does not bring with it a liability to tax under Case VI., though that sum is paid in monthly instalments (*i*).

The profit which it is sought to charge under Case VI. must be "really a profit or gain within the meaning of the Income Tax Code" (*k*). A mere enjoyment is, therefore, not taxable under this Case, or under any other provision (*l*);

(*e*) Cf. the distinction between additions to capital and taxable profits in connection with trades under Case I., *supra*, pp. 122—125; and see per ROWLATT, J., in *McKinlay* v. *Jenkins* (1926), 10 Tax C. 372, *supra*, p. 123, at p. 404.

(*f*) *Pearn* v. *Miller* (1927), 11 Tax C. 610; the case was remitted to the Special Commissioners for a finding whether a trade was carried on, and they found that it was not: Rating and Income Tax Newsp., Oct. 22, 1927.

(*g*) *Leeming* v. *Jones* (1929), *ibid.*, July 6, 1929. Here also the Commissioners found that the transaction was not in the nature of trade.

(*h*) By the majority of the C. A. in *Cooper* v. *Stubbs*, [1925] 2 K. B. 753; see note (*z*), *supra*, p. 81.

(*i*) *Laird* v. *I. R.* (1928), Rating and Income Tax Newsp., Oct. 6, *supra*, p. 232. Cf. *Foley* v. *Fletcher*, and cases cited therewith, *supra*, p. 191.

(*k*) *A.-G.* v. *Black* (1871), L. R. 6 Ex. 308, *supra*, p. 157; *Tennant* v. *Smith*, [1892] A. C., *infra*, p. 311, per Lord MACNAGHTEN at p. 163; *Severn Fishery Board* v. *O'May*, [1919] 2 K. B. 484. Thus, in *Roberts* v. *Belhaven's Exors.* (1925), S. L. T. 466, payments for the right to remove dross or spoil have been held not to be taxable.

(*l*) *Tennant* v. *Smith*, *supra*.

nor is a voluntary gift which is not connected with the holding of an office (*m*). Again, a fishery board under the Salmon and Freshwater Fisheries Acts, 1861 to 1892, is not taxable in respect of the net receipts derived from fishing licences, or from penalties paid by persons fishing without a licence, because these are not analogous to the profits of a trade (*n*).

Profits of the same nature as those formerly grouped under No. III. of Schedule A (*o*) are, however, chargeable under Case VI. of Schedule D, if they are not profits of any of the "concerns" referred to in No. III. (*p*); and, therefore, it was held that contributions made by certain railway companies under compulsion of statute to the upkeep of an inland navigation were chargeable under Case VI., if not under No. III. (*q*).

Assessments made under Case VI., as an alternative to Case I., have been upheld (without a decision as to which case was the more appropriate) in relation to the receipts of a hospital from letting rooms for entertainment (*r*), of a golf club from visitors' green fees (*s*), and of a farmer (*t*), or the owner of a private stud (*u*), from letting out the services of a stallion.

(*m*) *Turner* v. *Cuxon* (1888), 22 Q. B. D. 150, *infra*, p. 251; as to annuities, see Case III. and Chap. VIII.

(*n*) *Severn Fishery Board* v. *O'May*, *supra*.

(*o*) See Chap. III.

(*p*) *A.-G.* v. *Black*, *supra*.

(*q*) *Humber Conservancy Board* v. *Bater*, [1914] 3 K. B. 449, *supra*, p. 158.

(*r*) *Coman* v. *Rotunda Hospital (Governors)*, [1921] 1 A. C. 1, *supra*, p. 83; *infra*, p. 292. See also *Brighton College* v. *Marriott*, [1925] 1 K. B. 312, per SCRUTTON, L.J., at p. 327.

(*s*) *Carlisle and Silloth Golf Club* v. *Smith*, [1912] 2 K. B. 177; [1913] 3 K. B. 75, *supra*, p. 87.

(*t*) *Malcolm* v. *Lockhart*, [1919] A. C. 463; *McLaughlin* v. *Bailey*, [1920] I. R. 310; 7 Tax C. 508, *supra*, p. 67; cf. *McKenna* v. *Herlihy*, *infra*.

(*u*) *Earl of Derby* v. *Bassom* (1926), 42 T. L. R. 380, *supra*, p. 67. As to the method of arriving at the profits in such cases, see *Marshall* v. *Tweedy*, [1927] S. C. 243.

(*x*) *Vide supra*, p. 210.

As to most kinds of taxable profits, there is some more specific Schedule or Case which renders the application of Case VI. of Schedule D either unnecessary or inappropriate; but certain classes of matters may be mentioned to which this Case applies more particularly. Profits made by the letting of a furnished house are, in practice, taxed under Case VI.; where this is done, no deduction is allowable for rent paid by the lessor in order to provide himself with another house during the letting of his own (*z*). A commission received for guaranteeing an overdraft with a bank (*a*), and a commission for underwriting an issue of shares (*b*) are taxable under Case VI. So also are profits from grazing cattle on lands which are not in the occupation of the grazier, where this is not a part of the necessary operations of his farm (*c*); but if, following the usual custom, sheep are sent away from a Highland farm to be fed during the winter months, there can be no separate assessment under Case VI. in respect of the profits so made (*d*).

The exemptions in regard to lands occupied by a charity, and to public health sewers, do not extend to any rent payable or other annual payment to be made in respect of the land or the sewer (*e*). There is no direction as to how these are to be charged; but presumably the tax will be assessed on the payee under Case VI.

Payments not Charged before Passing of Annual Act.

Again, with regard to half-yearly or quarterly payments made on account of interest, dividends, or other annual profits before the passing of the yearly Income Tax Act, if these have been paid without charge or deduction of tax (*f*),

(*z*) *Wylie* v. *Eccott* (1912), 6 Tax C. 128; in *Martin* v. *Lowry, supra,* p. 237, Lord SUMNER points out that liability to tax was admitted in *Wylie's* case, see [1927] A. C. p. 317.

(*a*) *Ryall* v. *Hoare,* [1923] 2 K. B. 447; see note (*d*) on p. 237, *supra.*

(*b*) *Lyons* v. *Cowcher* (1926), 10 Tax C. 438.

(*c*) *McKenna* v. *Herlihy* (1920), 7 Tax C. 620, *supra,* p. 67; *Donald* v. *Thomson,* [1922] S. C. 237; 8 Tax C. 272.

(*d*) *I. R.* v. *Marshall and Mitchell,* [1929] S. C. 136.

(*e*) Finance Act, 1921, s. 30 (2), s. 34 (1), *vide infra,* pp. 288, 303.

(*f*) *Vide supra,* pp. 73, 174.

or if the tax has not been charged or deducted at the rate ultimately imposed by that Act when passed, it is expressly provided that the payments are to be charged, under Case VI. of Schedule D, with the tax or the balance of the tax that remains due. For this purpose the agents (if there are any such) entrusted with the making of the payment are to furnish the Commissioners of Inland Revenue with a list of the payees and of the amounts paid to them (*g*).

The language of this enactment (*g*) is remarkably loose; it is coupled with another provision which enables in similar circumstances any person liable to pay any rent, interest, annuity, or other annual payment, to make in arrear his full deduction of tax against the payee (*h*); there is no mention here of dividends. Little light, however, is thrown by this connection, save that both enactments are apparently intended to prevent a person escaping liability altogether, or liability at the full rate imposed for the year, merely because he has received a payment taxable at the source before the Finance Act of the year is passed.

Note first, that if the payment in question is an annual, a weekly, or a monthly payment, section 211 (1) has no application, for it applies only to payments made quarterly or half-yearly; and secondly, that if the profits out of which the payments are made are themselves taxable, this sub-section manifestly cannot apply; for if it did, it would tax the same sum twice over, first in the hands of the payer, and again in that of the payee. The assessment is apparently to be made on the payee, and not on the payer.

Computation of Profits.

With the exception indicated below, an assessment under Case VI. may be made either on the actual profits arising in the year of assessment, or upon the profits of a period not greater than one year, averaged out to twelve months, if

(*g*) Sect. 211 (1), *infra*, p. 465.
(*h*) Sect. 211 (2); a limitation was read into the wide terms of *this* sub-section in *Hill* v. *Kirshenstein*, *supra*, p. 56. *Vide supra*, pp. 56, 202.

the Commissioners so direct (*k*); that is, the Commissioners who make the assessment or before whom it is brought on appeal. Profits and losses may be divided and apportioned or aggregated where necessary for the purpose of applying the above rule (*l*).

Losses incurred on transactions, which, if profitable, would have afforded ground for assessment under Case VI., may be set off against profits assessed under that Case; the profitable and the losing transactions need not necessarily have any connection, nor need they be of a similar nature; and the losses may be carried forward for the six following years of assessment (*m*).

Dividends subject to Dominion Income Tax.

Further, in connection with the relief given in respect to Dominion income tax (*n*), it is provided that where income is taxable in the United Kingdom, but Dominion income tax has been paid or is payable in respect of it, the amount of the Dominion tax is to be added in calculating income for purposes of the United Kingdom tax (*o*). Where the income in question consists of "dividends" entrusted to any person in the United Kingdom for payment, and the Special Commissioners are satisfied that he is not in a position to ascertain the proper amount of this addition, the amount of the addition shall be charged on the recipient himself under Case VI. (*p*).

"Dividends" for this purpose includes dividends on preference, as well as ordinary, shares (*q*), and also (by definition) (*o*) any interest, annuities, dividends and shares of

(*k*) Sched. D, Case VI. r. 2, as amended by Act of 1926, s. 29 (2), *infra*, p. 510. See also p. 163, *supra*. For the exception referred to, see note (*t*).

(*l*) Act of 1926, s. 35 (1), *infra*, p. 585.

(*m*) Act of 1927, s. 27, *infra*, p. 590. As to the share of partnership profits referred to in sub-sect. (2) which would be included in a return of total income, see Chap. XIII., *infra*, p. 313.

(*n*) *Vide supra*, p. 25.

(*o*) Finance Act, 1920, s. 27 (4), *infra*, p. 535.

(*p*) *Ibid.*, proviso (a).

(*q*) Cf. *Sheldrick* v. *South African Breweries, Ltd.*, [1923] 1 K. B. 173, *supra*, p. 27, decided upon sub-sect. (5) of sect. 27.

annuities payable out of any public revenue, and charged under Schedule C (*r*); as well as any interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, shares, or securities of any foreign or colonial company, society, adventure or concern, and any annuities, pensions, or other annual sums payable out of the funds of any institution in India (*s*).

Annuities paid out of Superannuation Funds.

If the Commissioners of Inland Revenue so direct, an annuity paid out of a superannuation fund to a person residing in the United Kingdom is to be assessed directly upon the annuitant under Case VI. (*t*), instead of the tax being deducted by the payer as is usually the case with annuities (*u*). If this is done, the tax must be computed in the full amount arising in the year of assessment, and may not be averaged (*t*).

(*r*) See Chap. V.

(*s*) Sched. D, Misc. Rules, r. 7, *infra*, p. 512; see Chap. VIII., pp. 180, 188.

(*t*) Finance Act, 1921, s. 32 (2), *vide supra*, p. 186; as to the meaning of "superannuation fund," *vide infra*, p. 300.

(*u*) See Chap. VII.

CHAPTER X.

INCOME FROM OFFICES, EMPLOYMENTS AND PENSIONS: SCHEDULE E.

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Scope of Schedule E.

THE following classes of profits are now chargeable under Schedule E:—

(1) The profits of all offices and employments, the duties of which are performed in the United Kingdom and the profits of which are payable in this country (*a*);

(2) The profits of all offices and employments under any public department whose head office is in the United Kingdom, whether the duties are performed and the profits payable within the United Kingdom or not (*b*);

(3) The profits of all pensions payable in the United Kingdom, unless payable out of the funds of any institution in India (*c*), or the public revenues of a foreign State (*d*).

(*a*) Sched. E, *infra*, p. 512; Act of 1922, s. 18 (1), *infra*, p. 546; *Pickles* v. *Foster*, [1913] 1 K. B. 174, *infra*, p. 246. Where the duties of an office or employment (not under a public department) are performed abroad, but the profits are payable in this country, those profits also now appear to be chargeable under Sched. E; see *Foulsham* v. *Pickles*, [1925] A. C. 458; but the actual decision of the H. L. merely excludes those profits from Case V. of Sched. D, *vide supra*, pp. 231, 232.

(*b*) Sched. E, Rule 18 (2), *infra*, p. 516; see *Pickles* v. *Foster*, *supra*.

(*c*) Act of 1922, s. 18 (1); Sched. D, Misc. Rules, r. 7, *vide supra*, p. 188. An annuity granted from a voluntary fund to a retired minister on condition of his resigning his duties was formerly held to be chargeable under Sched. D, *Duncan's Exors.* v. *Farmer*, [1909] S. C. 1212, 5 Tax C. 417; but would now be chargeable under Sched. E.

(*d*) Annuities (in the nature of pensions) paid out of such funds appear still to be taxable under the rules of Sched. C, *vide supra*, p. 73; but sect. 17 of the

The scope of the Schedule is no longer limited by the phrase "public office or employment of profit," which appears at its head, or by the list of offices contained in Rule 6 (*e*); the considerable extension given to it by sect. 18 of the Finance Act, 1922 (*f*), has deprived these of any practical effect.

The income of High Commissioners and Agents-General and members of their personal staffs and of official agents, is specifically exempted (*g*).

Office or Employment.

In spite of the language used in sect. 18 of the Finance Act, 1922 (*f*), by which "profits . . . from an office, employment or pension" are, with certain exceptions, transferred from Schedule D to Schedule E, it seems clear that the meaning of the word "employment" in connection with Schedule E is confined to employment under an employer (whether the latter be the Crown, an individual, or a corporation), and is not used in the wider sense of a "calling" or "vocation" (*h*).

Even though an office or employment is understood to be gratuitous, or has ceased before any profit accrues, nevertheless, should any profit accrue to the holder by reason of the office or employment, it is chargeable under Schedule E (*i*).

A person employed by a company was held not to be taxable under Schedule E, if the duties of his employment are exercised wholly outside the United Kingdom, although his remuneration is paid wholly or partly in this country

Act of 1923, *infra*, p. 561, makes pensions and annuities, due to service under the Crown outside Great Britain or Northern Ireland and payable here, chargeable under Sched. E, as well as other emoluments so earned and so payable.

(*e*) *Infra*, pp. 512, 513.

(*f*) *Infra*, p. 546; its enactment followed upon the decision in *Great Western Rail. Co.* v. *Bater*, [1922] 2 A. C. 1.

(*g*) Finance Act, 1923, s. 19; Act of 1925, s. 26, *infra*, pp. 562, 575.

(*h*) The word is used in that wider sense in Sched. D; see *Partridge* v. *Mallandaine* (1886), 18 Q. B. D. 276, *supra*, p. 113.

(*i*) *Cowan* v. *Seymour*, [1920] 1 K. B. 500, *infra*, p. 248, per ATKIN, L.J., at p. 511, and per YOUNGER, L.J., at p. 518.

and although he has a residence in this country (*j*); but it may be that, since the transfer effected by sect. 18 of the Act of 1922, the profits of such an employment would now be held to be within the scope of Schedule E (*k*).

The remuneration of a director or managing director of a limited company is chargeable under this Schedule (*l*), though the company is a private company (*m*); and although he resides and carries out the rest of his duties abroad, if he is bound to attend meetings of the board in England (*n*). The tax cannot be paid for a director by a company which has no specific power to do so (*o*). The salaries of a college bursar (*p*), of the chaplain of a charitable school (*q*), and of the master and mistress of a national school (*r*), are also so taxable. The share of the collegiate income which is paid to a member of a college is not taxable under this Schedule (*s*).

The employments chargeable under this Schedule include those of weekly wage-earners (*t*).

The Profits Assessable.

Speaking generally (*u*), the tax is assessed upon "all salaries, fees, wages, perquisites or profits or gains whatsoever, arising from an office or employment," or upon "the

(*j*) *Pickles* v. *Foster*, [1913] 1 K. B. 174; *infra*, p. 258.

(*k*) See *Foulsham* v. *Pickles*, [1925] A. C. 458, *supra*, p. 244, note (*a*); *Fleming* v. *Wilkinson* (1925), 10 Tax C. 416, *supra*, p. 231.

(*l*) *Berry* v. *Farrow*, [1914] 1 K. B. 632; as to profits, and deductions, *vide infra*, pp. 249, 254.

(*m*) *Watson* v. *Rowles* (1926), 135 L. T. 614.

(*n*) *Proctor* v. *Ryall* (1928), 7 A. T. C. 287.

(*o*) *Boschoek Proprietary Co., Ltd.* v. *Fuke*, [1906] 1 Ch. 148, 162; see, however, *Hartland* v. *Diggines*, *infra*, p. 246, note (*b*).

(*p*) *Langston* v. *Glasson*, [1891] 1 Q. B. 567.

(*q*) *In re School for Indigent Blind*, [1898] 2 Ch. 669, *infra*, p. 258.

(*r*) *Bowers* v. *Harding*, [1891] 1 Q. B. 560, *infra*, p. 255.

(*s*) *Langston* v. *Glasson*, *supra*; nor is it brought within the scope of the Schedule by sect. 18 of the Act of 1922. As to exemptions and allowances for colleges, &c., see Chap. XII.

(*t*) Act of 1922, s. 18 (1) (3); as to those employed by way of manual labour, *vide infra*, p. 255.

(*u*) Income from certain sources remains unaffected by the amendments in sect. 45 of the Act of 1927: sub-sect. (1), proviso, *infra*, p. 604. These are dealt with *infra*, p. 257.

amount of any annuity, pension or stipend" (*y*), subject to certain deductions.

Any duties or other sums payable or chargeable on the profits by Act of Parliament are to be deducted, where actually borne by the party taxed (*z*). If the employer pays the emoluments "free of income tax," discharging the tax himself, the amount of the tax must be added to what the employee has received in order to ascertain the true amount of his assessable profits (*a*), even though the employer is not compelled by any contract to make the payments free of tax (*b*).

Allowance is made for all official deductions and payments made on receipt of the profits (*c*), as well as for travelling and other expenses wholly and necessarily incurred in performing the duties of the office (*d*). No deduction is allowed on this account for the travelling expenses of persons who reside at a distance from the scene of their duties (*d*).

The profits assessed include voluntary gifts, provided they are received in virtue of the office; the fundamental question with regard to this matter is whether the sum dealt with has accrued as a profit by reason of an office; and if a gift is a mere gratuity or testimonial given of free will to

(*y*) The statement of the text is an attempt to give the effect of Rule 1, *infra*, p. 512, as read with Act of 1927, s. 45 (1), (10), *infra*, pp. 604, 606. The gross receipts are described as "emoluments" in sub-sect. (10), and "deductions from emoluments" are referred to in sub-sect. (2). The definition of "perquisites" formerly contained in Rule 4 was repealed by Act of 1922, Third Sched., and s. 49 (4).

(*z*) Rule 1; these words have been held not to apply to voluntary or compulsory contributions made to a thrift fund set up by Act of Parliament, *Hudson* v. *Gribble; Bell* v. *Gribble*, [1903] 1 K. B. 517; and it is difficult to see what effect they have. The soundness of that decision was questioned in the first edition of this book; but owing to the passing of sect. 32 of the Finance Act, 1921, and sect. 31 of the Act of 1922, the point has now become academic; see p. 252, *infra*.

(*a*) *North British Rail. Co.* v. *Scott*, [1923] A. C. 37; cf. *Samuel* v. *I. R.*, *infra*, p. 314.

(*b*) *Hartland* v. *Diggines*, [1926] A. C. 289. (*c*) Rule 8.

(*d*) Rules 9, 10; *Cook* v. *Knott* (1887), 2 Tax C. 246; *Revell* v. *Elworthy* (1890), 3 Tax C. 12, *infra*, p. 255; *Ricketts* v. *Colquhoun*, [1926] A. C. 1, *infra*, p. 255; see also cases under Ecclesiastical offices, *infra*, p. 251.

the holder of an office on or after his ceasing to hold the office, the sum so received is not taxable (*e*).

"Now that judgment (*f*) . . . . is certainly an affirmation of a principle of law that a payment may be liable to income tax although it is voluntary on the part of the persons who made it, and that the test is whether, from the standpoint of the person who receives it, it accrues to him in virtue of his office. . . . . That seems to me to be the test; and . . . . the liability to income tax is not negatived merely by reason of the fact that there was no legal obligation on the part of the persons who contributed the money to pay it" (*g*).

"The question is not what was the motive of the payment, but what was the character in which the recipient received it? Was it received by him by reason of his office?" (*h*).

The word "profits" "in its ordinary acceptation appears to me to denote something acquired which the acquirer becomes possessed of and can dispose of to his advantage—in other words, money—or that which can be turned to pecuniary account" (*i*). "The thing sought to be taxed is not income unless it can be turned into money" (*j*).

Accordingly, the profits of an office or employment include, upon the one hand, gifts like Easter Offerings made to an incumbent by virtue of his office (*k*). On the other

(*e*) *Cowan* v. *Seymour*, [1920] 1 K. B. 500, per YOUNGER, L.J., at p. 518, *supra*, p. 245.

(*f*) *I. R.* v. *Strong* (1878), 18 S. L. R. 704; 1 Tax C. 207, *infra*, p. 250.

(*g*) *Herbert* v. *McQuade*, [1902] 2 K. B. 631, per COLLINS, M.R., at p. 649, *infra*, p. 250.

(*h*) *Cooper* v. *Blakiston*, [1907] 2 K. B. 688, per BUCKLEY, L.J., at p. 703, *infra*, p. 250; this rule was applied in *Hartland* v. *Diggines*, *supra*, p. 247, note (*b*); *Mudd* v. *Collins*, *infra*, p. 249, note (*p*). In *Cowan* v. *Seymour*, *supra*, however, the motive of the payment was not altogether disregarded.

(*i*) *Tennant* v. *Smith*, [1892] A. C. 150, *infra*, p. 311, per Lord WATSON at p. 159. Lord Watson goes on to recite the fourth rule of Sched. E as it stood in the Act of 1842; and the corresponding rule in the Act of 1918 has been repealed, see p. 247, note (*y*). But the other Lords did not refer to Rule 4; and it is submitted that in spite of this repeal the principle stated in the words quoted in the text, as well as the actual decision in the case, are still applicable.

(*j*) *Ibid.*, per Lord HALSBURY, L.C., at p. 157.

(*k*) *Blakiston* v. *Cooper*, [1909] A. C. 104, *infra*, p. 250.

hand, they do not include a gratuity paid to the liquidator of a company, after his employment has come to an end, as a personal testimonial for the services rendered while it was in existence (*l*); a sum received by a professional cricketer out of the proceeds of a benefit match to which he has no legal right under the terms of his employment (*m*); nor a pension or gratuity voluntarily given by a company to a retired managing director (*n*). But a payment made to a professional footballer, on his transfer to another club, in lieu of a benefit to which he would have been entitled if he had remained with the transferring club, forms part of the profits of his employment (*o*). A commission paid to the secretary and director of a company in liquidation for negotiating the sale of a part of the company's business was held to be part of the profits of his office, though the services for which it was paid were not part of the duties of the office (*p*). Sums paid to the chairman of a company for visiting China (*q*), and other sums paid to a chairman or directors in addition to their ordinary remuneration (*r*), are included in the profits of their offices.

A yearly allowance made by a city corporation to a police officer to provide suitable clothing for himself forms part of the profits of his office for the purpose of Schedule E (*s*).

The annual value of a bank manager's residence in which he resides rent free, and in which he is bound to reside as part of his duty, is not included in the profits for which he is assessed under this Schedule (*t*).

A mere book credit of a sum of money which may become the property of the person employed on the happening of a

(*l*) *Cowan* v. *Seymour,* [1920] 1 K. B. 500, *supra,* pp. 245, 248.

(*m*) *Seymour* v. *Reed,* [1927] A. C. 554.

(*n*) *Benyon* v. *Thorpe* (1928), 44 T. L. R. 610; cf. *Chibbett* v. *Robinson, supra,* p. 125.

(*o*) *Davis* v. *Harrison* (1927), 137 L. T. 324.

(*p*) *Mudd* v. *Collins* (1925), 41 T. L. R. 358. (*q*) *Barson* v. *Airey, ibid.* 560.

(*r*) *Dauncey* v. *Howlett* (1926), 10 Tax C. 454; *Radcliffe* v. *Holt* (1927), 11 Tax C. 621.

(*s*) *Fergusson* v. *Noble,* [1919] S. C. 534; 7 Tax C. 176.

(*t*) *Tennant* v. *Smith, supra;* the case arose with regard to exemption from tax, *vide infra,* p. 311.

certain contingency, but may never be his at all, is not enough to include that sum in his taxable profits (*u*).

Profits of Ecclesiastical Offices.

A series of decisions has been given with regard to the taxation under Schedule E of the holders of offices or employments under ecclesiastical bodies (*x*). A voluntary gift made annually at Christmas to a minister of the Church of Scotland is to be included in the profits assessable (*y*); so is the Easter Offering which it is customary in the Church of England to make to the incumbent of a benefice, although it is true that if he were not personally esteemed his parishioners would make him a smaller gift, or would refrain from making the gift at all (*z*). The profits of a beneficed clergyman of the Church of England include also a grant made annually to him in order to supplement the inadequate income of his benefice, out of a fund raised voluntarily for the augmentation of such incomes (*a*); the same conclusion was reached with regard to the stipend of a minister of another denomination, which had been similarly augmented, and COZENS-HARDY, L.J., said that as this was not primarily a personal gift, it made no difference that the trustees of the fund, in considering how to distribute it, had regard to the pecuniary position of the ministers (*b*). On the other hand, a grant made out of a curates' augmentation fund to a clergyman of the

(*u*) *Walker* v. *Reith* (1906), 8 F. 381; in that case sums were credited to the chief employees in a business, but were not to become their property until they should buy out the business.

(*x*) Sched. E, r. 6 (g), *infra*, p. 514.

(*y*) *I. R.* v. *Strong* (1878), 15 S. L. R. 704; 1 Tax C. 207. The principles upon which voluntary gifts are or are not taxable are stated *supra*, under "Basis of Assessment."

(*z*) *Blakiston* v. *Cooper*, [1907] 2 K. B. 688; [1909] A. C. 104. Lord ALVERSTONE, C.J., [1907] 2 K. B. at pp. 698, 699, throws doubt upon the decision in *Turton* v. *Cooper* (1905), 92 L. T. 863; 5 Tax C. 138, that an Easter offering was not taxable where it was actuated by the poverty of the recipient.

(*a*) *Herbert* v. *McQuade*, [1902] 2 K. B. 631; see the observations on this case and on *Blakiston* v. *Cooper*, *supra*, in *Seymour* v. *Reed*, [1927] A. C. pp. 565—570.

(*b*) *Poynting* v. *Faulkner* (1905), 5 Tax C. 145. This view seems to dispose of the decision in *Turton* v. *Cooper*, *supra*.

Church of England, not as being curate of a parish but for having worked during many years without reproach, was held not to arise from or by reason of an office or employment, and not to be taxable under Schedule E (*u*).

A clergyman or minister of any religious denomination may deduct (under Schedule E or any other Schedule) from his profits "any sums of money paid or expenses incurred by him wholly, exclusively and necessarily in the performance of his duty as a clergyman or minister" (*x*). A payment made to an assistant minister for the performance of the minister's duty does not give rise to such a deduction (*y*), nor do the expenses of claiming an augmentation of stipend (*z*); nor do expenses incurred in travelling from one curacy to another (*a*). Deduction may, however, be made for communion expenses, expenses incurred in visiting the congregation and attending meetings, and in buying stationery (*b*).

The annual value of a house necessarily occupied by a clergyman for the discharge of his duties does not form part of his profits taxable under Schedule E (*c*); it depends on circumstances whether he is taxable for it under Schedule A (*d*).

A clergyman or minister who uses part of his dwelling-house for the performance of his duties may deduct from his profits 1/8th of the rent (if he pays rent) or 1/8th of the annual value (if the house is rent-free) (*e*).

(*u*) *Turner* v. *Cuxon* (1888), 22 Q. B. D. 150; the authority of this case does not appear to be shaken by the later decisions cited in the text; see per Lord ALVERSTONE, C.J., in *Blakiston* v. *Cooper, loc. cit.*

(*x*) General Rules, r. 2 (1) (a); Sched. E, rr. 9 and 10, *infra,* pp. 517, 514; and cf. Sched. D, Cases I. and II. r. 3 (a), *infra,* p. 499.

(*y*) *Lothian* v. *Macrae* (1884), 12 R. 336; 2 Tax C. 65; *Jardine* v. *Gillespie,* [1907] S. C. 77; 5 Tax C. 263.

(*z*) *Jardine* v. *Gillespie, ubi sup.*

(*a*) *Friedson* v. *Glyn-Thomas,* [1922] W. N. 251; 8 Tax C. 302.

(*b*) *Charlton* v. *I. R.* (1890), 17 R. 785; *Jardine* v. *Gillespie, ubi sup.*

(*c*) Cf. *Tennant* v. *Smith,* [1892] A. C. 150, *supra,* p. 248.

(*d*) See *McDougall* v. *Sutherland* (1894), 21 R. 753; 3 Tax C. 261; *Corke* v. *Fry* (1895), 22 R. 422; 3 Tax C. 335, *infra,* p. 311. If he is not so taxable, he may claim a certain addition to his "earned income" deduction: Finance Act, 1919, s. 22, *infra,* p. 527; *vide supra,* p. 18.

(*e*) General Rules, r. 2 (1) (b), *infra,* p. 517; this gets rid of the decision to the contrary in *Charlton* v. *I. R.* (1890), 17 R. 785.

Contributions to Superannuation Funds, &c.

As has been seen in Chapter I., certain relief is given as regards income tax charged under any Schedule, for sums paid by any person in fulfilment of a liability imposed by any Act of Parliament, or by the terms and conditions of his employment, for the purpose of securing a deferred annuity to his widow, or provision for his children after his death (*f*). This relief applies primarily, if not entirely, to employed persons; it is, however, subject to certain restrictions as to amount (*g*); and fails to deal with any provision made by such a person for securing an annuity for himself or a gratuity to his widow.

The omission is now met, to a great extent at any rate, by allowing deductions in computing the actual amount of assessment under Schedule E, in respect of (1) any sum paid by an employed person towards a superannuation fund (*h*), and of (2) any sum paid by an individual holding an office or employment towards providing a superannuation allowance or gratuity on retirement or death, under the compulsion of a public general Act of Parliament (*i*). These two concessions appear to cover much the same ground, except that a "superannuation fund" must be approved by the Commissioners of Inland Revenue, and in order to qualify for that approval, must comply with certain conditions (*k*); whereas, if the contribution be payable under a general Act, no such approval is required. Further, while

(*f*) Income Tax Act, 1918, s. 32, as amended by Finance Act, 1920, s. 26 (1), *vide supra*, p. 22.

(*g*) *Vide supra*, p. 24.

(*h*) Finance Act, 1921, s. 32, *infra*, p. 543; this enactment and that next cited appear to remove most, if not all, of the hardships following from the decisions in which the Courts refused to allow deductions in computing assessments under Sched. E for contributions (voluntary or compulsory) to a provident fund set up by the employer with the authority of a local Act, *Hudson* v. *Gribble; Bell* v. *Gribble*, [1903] 1 K. B. 517, or without such authority, *Smyth* v. *Stretton* (1904), 5 Tax C. 36; *Bruce* v. *Hatton*, [1922] 2 K. B. 206. See also note (*z*) on p. 247, *supra*.

(*i*) Finance Act, 1922, s. 31, *infra*, p. 554; see, *e.g.*, the Local Government and Other Officers' Superannuation Act, 1922, 12 & 13 Geo. 5, c. 59.

(*k*) Some of these conditions may be waived, and others substituted for them, by the Commissioners; this subject is more fully considered *infra*, p. 300.

payment to secure a gratuity on death is expressly provided for in the case of a public general Act, this is not so in the case of a superannuation fund; but in the latter case, if the fund provides for payment of a gratuity, and if its main purpose is to provide annuities on retirement or incapacity, it is in the Commissioners' discretion whether or not they shall approve the fund (*l*).

In the case of a "superannuation fund," the contribution is to be deducted as an expense incurred in the year in which the sum is paid; and it must be an "ordinary annual contribution" (*m*), a phrase which excludes an entrance fee or donation, paid once for all. Where the contribution is paid under a general Act, the sums contributed under compulsion of the Act "for any year" may be deducted from the amount of emoluments on which the payer is to be assessed for that year (*n*). In neither case is there any restriction as to the amount of the deduction.

Payments out of Superannuation Funds, &c.

An annuity paid out of a superannuation fund would ordinarily be taxed by way of deduction at the source, like other annuities which are not wholly payable out of taxable profits, and in that case the trustees or managers of the fund would have to account to the Inland Revenue for the tax deducted (*o*). In order to obviate this inconvenience, the Commissioners of Inland Revenue are empowered to direct that the annuitant himself shall be assessed under Case VI. of Schedule D; in such a case the assessment will be on the actual receipts of the year (*p*).

(*l*) Act of 1921, s. 32 (3), (a), proviso (ii), *infra*, p. 544.

(*m*) Act of 1921, s. 32 (1), and proviso (a), *infra*, p. 543; Regulations made under sect. 32, reg. 5, *infra*, p. 622. By proviso (b), the deduction is confined to payments which are outside the scope of sect. 32 of the Act of 1918, *vide supra*, p. 22. (*n*) Act of 1922, s. 31, *infra*, p. 554.

(*o*) General Rules, Rule 21; see pp. 193—201, *supra*. This is still the case where the payee resides out of the United Kingdom, except where his employment was carried on abroad; Regulations made under sect. 32 of the Act of 1921, reg. 9, *infra*, p. 622.

(*p*) Act of 1921, s. 32 (2), *supra*, p. 243; the direction must apparently be specific in each particular case. But an annuity paid out of a superannuation fund appears

Where contributions to a superannuation fund (with or without interest thereon) are repaid to a contributor, and where a lump sum is paid in commutation, or in lieu, of an annuity, income tax is to be paid thereon by the trustees of the fund at one-third of the standard rate in force in the year in which the payment or repayment is made; this does not apply where the employment was carried on abroad (*q*). There is no provision which enables the trustees to deduct this tax against the payee, unless by contract or under the rules of the fund.

On the other hand, where contributions made under a public general Act of Parliament are to be repaid under the authority of the Act, the person who makes the repayment is to deduct the whole amount of the tax that would have been paid on the contributions if they had not been allowed as deductions, as well as the tax on the interest, if any; he is to account to the Crown for the tax so deducted (*r*).

Other Deductions for Expenses.

Apart from the matters last dealt with and from the expenses of ecclesiastical offices (*s*), the following points have been decided with regard to deductions in arriving at assessments under Schedule E:—A managing director of a limited company which has taken over his business cannot deduct against his salary his average loss on the business before it was taken over (*t*); nor can a managing director, who has agreed to pay for new shares out of his commission on business done, deduct the amount so paid (*u*). As already stated, travelling and other expenses necessarily incurred in performing the duties of an office or employment are

to be a "pension" within the meaning of sect. 18 of the Act of 1922, *vide supra*, p. 244; and therefore to be chargeable under Sched. E; if so, it would still be assessed on the receipts in the year of assessment.

(*q*) Regulations made under sect. 32 of the Act of 1921, reg. 8, *infra*, p. 622; as to the meaning of "debt due to the Crown," *vide infra*, p. 404.

(*r*) Act of 1922, s. 31 (1), proviso, *infra*, p. 554; General Rules, r. 21 (2), *infra*, p. 522.

(*s*) *Supra*, p. 250.

(*t*) *Bray* v. *Brothers* (1897), 3 Tax C. 550.

(*u*) *Parker* v. *Chapman* (1928), 138 L. T. 729.

deductible (*v*); but not those of getting to the place where they are performed (*w*). Thus, the expenses of a justices' clerk incurred in travelling from his residence to the Court (*x*) are not deductible; nor those of a Recorder who practises as a barrister in London, incurred in travelling to hold his quarter sessions (*y*); nor those incurred by directors of a company in coming from home to attend their meetings (*z*). The wages of a domestic servant are not deductible from the salary of a school teacher (*a*). A county medical officer has been held not entitled to deduct subscriptions to medical and other professional societies, which were necessary for him to keep acquainted with the developments of sanitary science, on the ground that in joining the societies he was not discharging the duties of his office (*b*). It is submitted that this view is doubtful.

Profits of Weekly Wage-Earners.

Weekly wage-earners employed by way of manual labour (as distinguished from persons employed as clerks, typists, draftsmen, or in any other similar capacity) are charged under Schedule E (*c*) in respect of the wages of such employment upon the actual amount of their wages for each half-year; the assessment is to be made half-yearly (*d*). Where a sum for board and lodging, which varies with the cost of living, is deducted in paying wages, that sum must be added to the cash payments received in order to find the amount assessable (*e*). The Commissioners of Inland Revenue, jointly with the General Commissioners, are the

(*v*) Sched. E, r. 9, *vide supra*, p. 247.

(*w*) See, *e.g.*, *Andrews* v. *Astley* (1924), 8 Tax C. 589.

(*x*) *Cook* v. *Knott* (1887), 2 Tax C. 246; see also p. 251, note (*a*).

(*y*) *Ricketts* v. *Colquhoun*, [1926] A. C. 1.

(*z*) *Revell* v. *Elworthy, Ltd.* (1890), 3 Tax C. 12, following *Cook* v. *Knott*, *supra*.

(*a*) *Bowers* v. *Harding*, [1891] 1 Q. B. 560.

(*b*) *Simpson* v. *Tate*, [1925] 2 K. B. 214.

(*c*) Finance Act, 1922, s. 18 (1) (2), *infra*, p. 546.

(*d*) Act of 1925, s. 18, *infra*, p. 573. The basis of these assessments is not affected by sect. 45 of the Act of 1927: see sub-sect. (1), proviso (c), *infra*, p. 605.

(*e*) *Cordy* v. *Gordon*, [1925] 2 K. B. 276; *Machon* v. *McLoughlin* (1926), 11 Tax C. 83.

final judges on any question whether a person is within this rule or not (*f*).

Computation of Amount.

The nature of the receipts to be brought into assessment under Schedule E, and of the deductions to be made before arriving at the profits, has now been considered. In general, both receipts and deductions are to be computed according to the facts of the preceding year (*g*). But in the year of assessment (commencing 6th April) in which an office or employment, or an annuity, pension or stipend commences, the tax is computed on the actual receipts and deductions of that year itself; and where it commenced in the course of the preceding year (and not on the 6th April in that year), the tax is also to be computed according to the facts of the year of assessment and not of the preceding year; where it commenced on the 6th April in the preceding year, or had commenced in the year before that—that is to say, where it has been enjoyed for a whole year, or for a year and a broken period, before the year of assessment—the person chargeable may have the amount of his assessment reduced to the net profits of the year of assessment, on giving notice within twelve months after the end of that year (*h*). For the year of assessment in which an office, employment or pension, &c. ceases to be held, the tax is to be computed on the net profits of that year itself to the date of cessation; and the assessment of the preceding year may also be increased so as to bring it up to the amount of the net profits of that year (*i*).

(*f*) Sched. D, Cases I. and II. r. 2, *infra*, p. 499, is now "deemed to be one of the rules applicable to Schedule E." For procedure as to assessment, and allowance and deduction in connection with such wage-earners, *vide infra*, p. 367.

(*g*) Act of 1927, s. 45 (1), (2), *infra*, p. 604. Provision is made for the transitional period in sub-sect. (3); and its application may affect the assessment for 1929-30.

(*h*) Sub-sect. (4) (i), (ii), (iii), *infra*, p. 605; where notice is given under sub-para. (iii) any overpayment will be refunded. Cf. the provisions in Case III. r. 2 (1), and those relating to Cases IV. and V. in sect. 29 (1), proviso (b), of the Act of 1927, *supra*, pp. 177, 224.

(*i*) Act of 1927, s. 45 (5), *infra*, p. 606. The necessary additional assessments may be made; and as to the year in which the office, etc. ceased, a repayment may

The above provisions do not apply to the following sources of income (*j*):—Any emoluments, pension or annuity payable in Great Britain or Northern Ireland (but not out of their revenues) in respect of service elsewhere rendered to the Crown—this includes leave pay, pensions, widows' pensions, and so on—where the recipient is resident in the United Kingdom (*k*); any office or employment exercised occasionally or intermittently in the United Kingdom by a person who is not continuously resident there (*l*); profits of weekly wage-earners employed by way of manual labour. The last class has been dealt with above (*m*). Income of the two former kinds remains assessable according to the net profits for the year of assessment itself (*n*). Provision is made for adjustment if the actual profits for the year of assessment prove to be greater, or less, than those on which the assessment has been made; in the latter case, the tax overpaid is to be refunded (*o*).

Any war bonus or other temporary increase or addition granted to meet the rise in the cost of living is brought into the assessment according to the provisions applicable to the remainder of the income from the office or pension, &c. (*p*).

Assessment and Collection.

Apart from the profits of weekly wage-earners employed by way of manual labour, who must be assessed directly (*q*), the tax under Schedule E may either be levied by deduction against the salary and other payments made to the person charged, or may be assessed and levied from him

be obtained of tax overpaid; as to the preceding year, if the actual profits did not come up to the amount of the assessment, the taxpayer has no relief.

(*j*) Sect. 45 (1), proviso (a), (b), (c).

(*k*) Act of 1923, s. 17; *vide supra*, p. 74; *infra*, p. 561.

(*l*) *Vide supra*, p. 244, note (*a*).

(*m*) *Supra*, p. 255.

(*n*) Sched. E, r. 1, *infra*, p. 512.

(*o*) Rule 5, as amended by Act of 1922, s. 18 (5), *infra*, p. 513. As to cesser of employment or pension, see Rules 2, 3.

(*p*) Act of 1924, s. 28, *infra*, p. 569; passed in consequence of the decision in *M'Donald* v. *Shand*, [1923] A. C. 337.

(*q*) Act of 1925, s. 18, *infra*, p. 573.

directly. In the case of "official pay" (*r*) (which includes annuities and pensions) the tax is deducted by the public office or department concerned, or by a Crown receiver or paymaster or any agent who pays the salary, &c. for the Crown (*s*); this applies also to emoluments, pensions and annuities in respect of employment in the service of the Crown outside Great Britain and Northern Ireland paid to residents within these countries (*t*). In cases of offices or employments under any bodies or persons other than the Crown or a Government Department it is deductible by any officer, receiver or agent who pays the salary, &c. (*u*). The deduction must be made even though the salary is fixed by a local Act and is directed to be paid without any deduction for taxes (*x*). It may be made against payments of arrears (*y*). But if it cannot be so deducted, or if the salary, &c. has already been paid, then the tax is levied directly upon the persons charged (*z*); this cannot, however, be done, unless that person has previously been served with a notice of assessment and a demand for payment, and it is not enough to leave the notice at the office of his employer (*a*).

There is also a provision which appears to enable any person chargeable under this Schedule to be assessed directly in the first instance by the Commissioners acting for any

(*r*) The definition in para. (3) of Rule 11, *infra*, p. 515, must be read with para. (1); otherwise "official pay" would include, *e.g.*, a salary paid by a limited company, which is clearly not the intention. Note that the phrase "public office" is used in para. (1) in the sense of a place, and not of an employment, as in the opening words of the Schedule and in Rule 6 (k), *infra*, p. 514.

(*s*) Rules 11, 15, 18, *infra*, pp. 515, 516. "Department" in Rule 18 means a Government Department; and the rule does not apply to a limited company so as to make its servants taxable as if they were employed at its head office, unless they are so employed in fact: *Pickles* v. *Foster*, [1913] 1 K. B. 174, *supra*, p. 246.

(*t*) Finance Act, 1923, s. 17, *infra*, p. 561; see p. 257, *supra*.

(*u*) Rules 12 and 15, *infra*, pp. 515, 516; Act of 1918, s. 106 (1), *infra*, p. 428; *vide infra*, p. 259.

(*x*) *In re School for Indigent Blind at Liverpool*, [1898] 2 Ch. 669.

(*y*) Rules 11 (1), 12.

(*z*) Rule 13.

(*a*) If these conditions have not been complied with, no distress can be levied: *Berry* v. *Farrow*, [1914] 1 K. B. 632, *infra*, p. 399.

parish in which he ordinarily resides, or in which he is employed (*b*).

An agent or officer who makes the payment of salary is not himself made chargeable with the tax (*c*), but if he has deducted the tax he must pay it over to the Inland Revenue authorities (*d*).

The profits of all offices and employments held under a railway company (except those of weekly wage-earners employed by way of manual labour), and of all pensions paid by them, are assessed upon the company by the Special Commissioners, and the company may deduct tax against the payees (*e*); if the company does not deduct the tax, the salary of the payee is increased accordingly and the company is assessed on the increased figure (*f*).

If a deputy executes the office or employment, and receives the profits for another, he is charged with the whole of the tax and may deduct the proper proportion against the profits that he hands over (*g*). In the converse case, where the holder of the office or employment has to pay over any part of the profits, or to pay an annuity, pension or stipend out of them, or to pay a salary or wages to a deputy, clerk or other person, the holder is liable for the whole tax, and may make a similar deduction (*h*).

A claim for repayment on account of a mistaken return may be made within six years after the end of the year of assessment affected, as under Schedule D (*i*).

(*b*) Rule 18 (5) of Sched. E as amended by sect. 18 (5) of the Act of 1922, *infra*, p. 517, is very difficult to read with Rule 13. The rules for assessment under Sched. E afford one of the worst instances of overlapping in the Income Tax Acts, and the statement in the text represents the best attempt the writer can make at reconciling them. As to appeals, see Chap. XVII.

(*c*) The contrary is the case under Sched. C, *supra*, p. 77.

(*d*) Rules 11 (1), 12; see also sect. 106 (1), *infra*, p. 428.

(*e*) Sched. E, r. 7, read with sect. 18 (3) of the Act of 1922, *infra*, p. 546, which was passed in consequence of the decision in *Great Western Rail. Co.* v. *Bater*, [1922] 2 A. C. 1, *supra*, p. 245. The cessation of such an office or pension is provided for in Act of 1927, s. 45 (7), *infra*, p. 606.

(*f*) *North British Rail. Co.* v. *Scott*, [1923] A. C. 37.

(*g*) Rule 14. (*h*) Rules 16, 17.

(*i*) Act of 1923, s. 24; Act of 1926, s. 27, read with Act of 1927, s. 45 (8), *infra*, pp. 564, 579, 606; see Chap. XV.

CHAPTER XI.

PERSONS LIABLE TO BE ASSESSED.

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Liability to Direct Assessment.

As has been seen in the preceding chapters, practically everything that is income is within the scope of the income tax, and a great part of the tax is levied by way of deduction at the source (*a*). Consequently the provisions which are dealt with in this chapter, as to the particular persons who are liable to make returns, to be assessed to the tax, and to pay it to the Inland Revenue collectors are, in the main, machinery provisions; they do not as a rule impose a burden which would not otherwise be imposed, but direct where the burden is, in the first instance, to be placed.

Residence in the United Kingdom does, however, in several classes of cases, of itself impose a burden; while in others, it is of importance only as indicating the person through whom a non-resident person may be assessed. A non-resident, for instance, who possesses property or exercises a trade within the United Kingdom is liable to the tax in respect of the profits of that trade (*b*). The question of "residence" of companies in this country

(*a*) See Chaps. II., IV., VII., X.
(*b*) Sched. D, 1 (a) (iii), *infra*, p. 497.

has been discussed in connection with the question whether a trade is carried on here (*c*); but the residence of individuals, and the provisions by which non-residents are made assessable in the name of residents, are dealt with in this chapter.

So far as the tax is leviable upon the income derived from the ownership or occupation of lands and hereditaments, the provisions as to the persons who have actually to pay the tax are so closely connected with those which impose the burden, and with those which regulate deduction against landlords and chargees, that it has been thought best to deal with them in one place (*d*). But the provisions for the special cases of infancy, death and so on, considered in this chapter, have their bearing upon Schedules A and B as well as upon other Schedules.

With the exceptions above indicated, it is proposed now to discuss the provisions indicating what persons are liable to pay the tax directly, as distinguished (except in the case of companies' dividends) from provisions which compel other persons to submit to deduction of tax at the source (*e*).

High Commissioners and Agents-General and their staffs (*f*) who are resident in Great Britain or Northern Ireland are entitled to the same immunity as accredited ministers of foreign States and their staffs (*g*).

Persons Assessable under the various Schedules.

Under Schedule A, and under Schedule B, the person primarily liable to the income tax is the occupier (who may happen also to be the owner) of the lands the profits of which are assessed (*h*), and under Schedule A there is a right to deduct tax against payments of rent, &c. (*i*).

(*c*) *Supra*, pp. 89 *sqq*.

(*d*) See Chap. II.

(*e*) The provisions which give trustees, agents, &c. the right to reimburse themselves stand on a different footing: *vide infra*, pp. 273 *sqq*.

(*f*) These terms are defined in Act of 1923, s. 19, *infra*, p. 562.

(*g*) Act of 1925, s. 26, *infra*, p. 575.

(*h*) *Supra*, pp. 48, 65.

(*i*) *Supra*, pp. 55, 59.

Under Schedule C, the liability in the first instance is upon the Bank of England and other authorities and agents entrusted with the payment of interest, &c. out of public revenues, and they have the right to deduct tax against such payments (*k*).

Under Schedule D, the tax is to be charged on and paid by the persons or bodies receiving or entitled to the income in respect of which tax is charged under that Schedule (*l*). Companies and others are entitled to deduct tax against dividends (*m*) and certain payments (*n*), and a great proportion of the tax raised under Schedule D is so collected. In the case of mines, quarries and other concerns transferred from Schedule A, the person assessed may deduct tax in paying dividends and in making any payment to the owner of the soil or the property, or to any creditor or other person who has a claim on the profits (*o*); for instance, in paying rent or royalties or debenture interest. A lessor of minerals who has had tax thus deducted against him, or otherwise paid tax in respect of rent or royalties, may obtain a reduction of tax on sums wholly, necessarily and exclusively disbursed as expenses of management or supervision of the minerals in the year to which the rent and royalties relate (*p*).

Under Schedule E, the tax upon offices, employments and pensions (*q*) is in general accounted for by the officer, receiver or agent who pays the emoluments, and has a right to deduct the tax in so doing (*r*); or the recipient may be assessed direct in certain cases (*s*).

(*k*) See Chap. IV.

(*l*) Sched. D, Misc. Rules, r. 1, *infra*, p. 510; Sched. A, No. III. r. 4, *infra*, p. 475, preserved (with Rules 5 and 7) by Act of 1926, s. 28 and 3rd Sched.; *vide supra*, p. 153. As to adventurers' mines, see No. III. r. 7, *infra*, p. 475.

(*m*) *Infra*, p. 264.

(*n*) Act of 1918, General Rules, rr. 19, 21, *vide supra*, pp. 182, 189.

(*o*) Sched. A, No. III. r. 5, *vide supra*, p. 154. No such deduction can be made in paying instalments of the purchase price of minerals: *Taylor* v. *Evans* (1856), 28 L. J. Ex. 100, *supra*, p. 191.

(*p*) Finance Act, 1922, s. 26, *infra*, p. 553; the claim is to be made as under sect. 33 of the Act of 1918, *vide supra*, p. 214.

(*q*) See Chap. X.

(*r*) Sched. E, rr. 11, 18, *infra*, p. 515, as to official pay; Rule 12 as to other emoluments: Rule 7 (2) as to offices, &c. held under a railway company; sect. 106, *infra*, p. 428, as to offices, &c. under companies and bodies generally; *vide supra*, p. 258.

(*s*) Sched. E, rr. 13, 18 (5), as amended by Finance Act, 1922, s. 18 (4).

The provisions above summarily referred to must be read subject to the principles and rules now to be discussed, which deal with bodies of persons, and with classes of individuals; many of these apply to more than one Schedule, and some of them to all the Schedules.

Bodies of Persons: Companies.

The word "person" appears in many places in the Income Tax Acts, and it may depend upon the context whether the word refers to individuals only, or whether it includes bodies of persons (*t*). With regard to liability to assessment the question is not left in doubt:—

"Every body of persons shall be chargeable . . . . in like manner as any person . . . ." (*u*); and "body of persons" means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate (*x*).

Any body of persons chargeable is assessed through the chamberlain or other officer acting as its treasurer, auditor or receiver for the time being, or if it is a company, through its secretary or other officer (by whatever name called) who performs the duties of secretary. Such chamberlain, officer or secretary may retain sufficient to pay the tax out of any money coming into his hands on behalf of the body (*y*). He is liable to make the returns, and to do all acts required for the assessment of the body or its employees (*z*).

(*t*) Cf. *Curtis* v. *Old Monkland Conservative Association,* [1906] A. C. 86; but where deductions and reliefs are intended to be confined to individuals, this is generally so expressed: see pp. 12 *sqq.*, *supra.*

(*u*) General Rules, r. 1, *infra,* p. 517; see also Sched. A, No. III. r. 4, and Sched. D, Misc. Rules, r. 1, *supra,* note (*l*), which cover parts of the same ground.

(*x*) Sect. 237, *infra,* p. 471; exemptions, &c. for charitable bodies, colleges, and so on are considered in Chap. XII.

(*y*) Sect. 106, *infra,* p. 428; there is no definition of "company."

(*z*) Sect. 106 (1); sect. 207, *infra,* p. 464; Fifth Sched., *infra,* p. 524. As to returns, see Chap. XV.

Companies and other Bodies are assessable on the whole of their Profits.

Any body of persons liable to the tax is charged on the full amount of its profits before any dividend is made of those profits in respect of any share, right or title thereto; and the body is entitled in paying the dividend to deduct the tax thereon (*a*), at the standard rate for the year in which the amount payable becomes due (*b*). A company is bound under penalties to show in its dividend warrants, &c., not only the net amount actually paid, but the gross amount corresponding to that, and the rate and amount of income tax appropriate to that gross amount (*c*).

It is under the above rules that shareholders in companies and so forth have the income tax upon their dividends deducted against them "at the source" (*d*). For a long time it was held that a company pays the income tax on behalf of the shareholders amongst whom its profits are distributed, while the shareholders, as the persons beneficially concerned, ultimately bear the burden (*e*). But the view more recently taken appears in the following passage: "Plainly, a company paying income tax on its profits does not pay it as agent for its shareholders. It pays as a taxpayer, and if no dividend is declared the shareholders have no direct concern in the payment. If a dividend is declared, the company is entitled to deduct from such dividend a proportionate part of the amount of the tax previously paid by the company; and in that case the payment by the

(*a*) General Rules, r. 20, *infra*, p. 521; the same ground is covered as far as the mines, quarries, and other concerns transferred from No. III. of Sched. A is concerned by Rule 5 (which is preserved by Act of 1927, s. 28 and 3rd Sched.), *infra*, p. 475; see *A.-G.* v. *Ashton Gas Co.*, *infra*, note (*k*).

(*b*) Act of 1927, s. 39 (1), *infra*, p. 599. For the meaning of "standard rate," see p. 2, *supra*.

(*c*) Act of 1924, s. 33, *infra*, p. 570.

(*d*) The provisions with regard to deduction of tax against yearly and other interest (as distinguished from dividend of profits) are considered *supra*, pp. 182—203. In a winding-up, arrears of preference dividend are paid without deduction of tax: *In re Dominion Tar and Chemical Co., Ltd.*, [1929] W. N. 189.

(*e*) See *e.g.*, *A.-G.* v. *Ashton Gas Co.*, [1904] 2 Ch. 621; [1906] A. C. 10; *Brooke* v. *I. R.*, [1918] 1 K. B. 257, *infra*, p. 339.

company operates in relief of the shareholder. But no agency, properly so called, is involved" (*f*). It follows from this principle that undistributed profits of a company are not income of the shareholders (*g*), though they may in certain circumstances be treated as such for purposes of sur-tax (*h*).

On the other hand, the word "dividend" is not limited to the amount distributed to a shareholder; it is wide enough to include, for instance, the portion of the profits of an assurance company to which the holder of a "participating policy" is entitled, and that portion cannot be deducted as an expense before payment of income tax (*i*). But the company can deduct tax on payment of that portion to the holder of the policy.

Like an individual, a body or company is also liable to pay on the whole of its profits without distinguishing any yearly interest, annuity or other annual payment that is payable, but is entitled to deduct tax when paying such moneys (*j*).

Payments of Dividends, &c. "Free of Income Tax."

The income tax on the dividends distributed forms part of the profits of the company; it is a proportionate part which the Revenue is entitled to take out of the profits. It is not a deduction before arriving at the profits (*k*); and income tax is not payable again by the shareholders on the share of the profits subsequently distributed to them (*l*).

(*f*) *I. R.* v. *Blott,* [1921] 2 A. C. 171, *infra,* p. 314, per Lord CAVE at p. 201; see per YOUNGER, L.J., in *Bradbury* v. *English Sewing Cotton Co.,* [1922] 2 K. B. at p. 589; and *Sheldrick* v. *South African Breweries, Ltd.,* [1923] 1 K. B. at p. 191; *Ritson* v. *Phillips* (1924), 131 L. T. 384; but see Act of 1927, s. 39 (1), *supra.*

(*g*) *I. R.* v. *Burrell,* [1924] 2 K. B. 52, *infra,* p. 316; see per POLLOCK, M.R., at p. 65, and the observations of SARGANT, L.J., at p. 73.

(*h*) Under Act of 1922, s. 21, as amended by Act of 1927, s. 31; see Chap. XIV.

(*i*) *Last* v. *London Assurance Corporation* (1885), 10 A. C. 438, *supra,* p. 139; see also *Sheldrick* v. *South African Breweries, supra,* p. 27. As to distributions of bonus shares, see *I. R.* v. *Blott,* p. 314, and the other cases there cited.

(*j*) General Rules, r. 19 (1), which is discussed at length *supra,* pp. 182—193.

(*k*) See the observations of BUCKLEY, J., in *A.-G.* v. *Ashton Gas Co., supra,* [1904] 2 Ch. at p. 624, which were adopted by the House of Lords.

(*l*) *Ibid.,* per ROMER, L.J., at p. 629; see also *Samuel* v. *I. R., infra.*

"A dividend free of tax . . . . is one of such an amount as after the deduction of the proper rate of tax leaves the rate of interest specified available for the shareholders. . . . . The gross amount of the dividend will vary with the amount in respect of tax which has not been received by the shareholder from the company. The amount not so received is the amount of the tax on the gross dividend, and is, in substance and in fact, deducted by the company within the meaning of Rule 20" (*ll*).

Accordingly, where there is a limit by way of percentage put by statute or otherwise upon the amount that may be distributed to the shareholders (or to shareholders of any particular class, such as preference shareholders), it is not lawful to pay a dividend at the fixed rate per cent. "free of income tax" (*m*).

Where a company has obtained the relief in respect of Dominion income tax (*n*), it may deduct only the United Kingdom tax as reduced by that relief, even against the holders of a particular class of shares (such as preference shares) who are entitled to a dividend at a fixed rate (*o*); and the same rule applies where the company has itself received the relief by way of a reduced deduction of tax at the hands of another company (*oo*).

Again, where a dividend is paid "free of income tax" (whether lawfully or not) the income tax "in substance and in fact deducted" by the company, as well as the dividend received, forms part of the income of the shareholder for the purpose of sur-tax (*p*), and for any relief which depends on total income (*q*).

(*ll*) *Gold Fields, &c. Development Co.* v. *Consolidated Gold Fields, supra,* p. 27, per TOMLIN, J., [1926] Ch. 338, at p. 356. For Rule 20, see note (*a*).

(*m*) *A.-G.* v. *Ashton Gas Co., supra.* Cf. *South American Stores, Ltd.* v. *I. R.* (1926), 12 Tax C. 905, *supra,* p. 204.

(*n*) *Vide supra,* p. 25; and see *I. R.* v. *Dalgety & Co., Ltd.*, p. 30.

(*o*) *Sheldrick* v. *South African Breweries, Ltd.*, [1923] 1 K. B. 173.

(*oo*) *Gold Fields, &c. Development Co.'s* case, *supra:* the company had, in fact, received a reduced deduction though the dividend purported to be paid "free of tax"; see the passage quoted above.

(*p*) *Samuel* v. *I. R.*, [1918] 2 K. B. 553, *infra,* p. 314; cf. *Hartland* v. *Diggines,* [1926] A. C. 289, *supra,* p. 247.

(*q*) See Chap. XIII.

Upon the principles above indicated, it has been decided that where the manager of a company was entitled by his agreement to be paid a percentage on the "net sum available for dividends," that net sum included the amount payable as income tax by the company, and deductible in paying dividends (*r*).

Partnerships.

Where a trade or profession (the profits of which are assessable under Case I. or Case II. of Schedule D) is carried on by two or more persons jointly, the assessment of the profits is made in the partnership name separately from any other assessment to which any one of the partners is liable; it makes no difference that any of the partners is a "sleeping partner" (*s*). Thus, where a trading ship belongs to part-owners, a single and distinct assessment is made upon them in respect of the profits of that ship, although the greater part of the shares is owned by one of the part-owners, who manages, and, in fact, controls the trade of the ship, and although he is also the owner or part-owner of another ship (*t*); the profits of the other ship will form the subject of a separate assessment (*u*). A separate assessment must always be made for a separate partnership unless the partners are the same people; and separate assessments for different partnerships in different places are specifically provided for (*u*).

Returns of the partnership income have to be made by the "precedent acting partner," that is, the first person named in the partnership agreement or (if there be no agreement) in the usual name of the firm, who is an acting partner; if none of the partners resides in this country, the returns are to be made by the resident agent, manager or

(*r*) *Johnston* v. *Chestergate Hat Manufacturing Co.*, [1915] 2 Ch. 338.

(*s*) Sched. D, Cases I. and II. r. 10, *infra*, p. 503. The partnership must exist in fact; it is not sufficient that a partnership agreement has been entered into: see *McKie* v. *Luck* (1925), 9 Tax C. 511; *Dickenson* v. *Gross* (1927), 137 L. T. 351, *supra*, p. 12.

(*t*) *A.-G.* v. *Borrodaile* (1814), 1 Price, 148; *Farrell* v. *Sunderland S.S. Co., Ltd.* (1903), 4 Tax C. 605, *supra*, p. 81.

(*u*) Cases I. and II. r. 16, proviso, *infra*, p. 506.

factor. The Commissioners may also require returns from every partner (*x*).

If the control or management of the partnership's trade is situate abroad, then the trade is deemed to be carried on by persons resident outside the United Kingdom, although some of the partners reside in this country and some of the trading operations are conducted in this country; but the partnership is assessable in respect of the profits of those operations to the same extent as, and to no greater extent than, if it were an individual resident abroad (*y*); and if any assessment can be made, it may be made in the name of any resident partner (*z*).

Partnership does not defeat the right of a partner to claim any relief (*a*), to claim an adjustment on account of loss in a trade or profession (*b*), or to claim a set-off against his profits of the partnership in respect of the loss made in a distinct trade (*c*). In any claim for relief the partner's income is deemed to be the share to which he is entitled, during the year to which his claim relates, of the partnership profits as estimated for income tax purposes (*d*); and not the actual share of profits received by him for that year (*e*). A lump sum payment to a retiring partner in satisfaction of his share of profits does not affect the calculation of the income of the remaining partners (*ee*).

The effect of a change or dissolution of partnership, and of a succession by a partnership to a trade, have been considered in connection with the profits of trade (*f*).

(*x*) Rule 10 (2), (3), (4); the assessment of non-resident persons is provided for by General Rules, *vide infra*, p. 275, and their mention here is superfluous. As to returns, see Chap. XV. A partnership has been held to exist in respect of joint transactions between a firm in this country and a firm in the U.S.A., *Morden Rigg & Co.* v. *Monks* (1923), 8 Tax C. 450, *supra*, p. 105.

(*y*) *Vide supra*, pp. 91, 104.

(*z*) Sched. D, Cases I. and II. r. 12 (1), (2), *infra*, p. 505.

(*a*) Sect. 20, *infra*, p. 409. See Chap. I. and the cases cited in note (*s*), *supra*.

(*b*) Sect. 34, *infra*, p. 416; *vide infra*, p. 389.

(*c*) Sched. D, Cases I. and II. r. 13, *infra*, p. 477; *vide supra*, p. 170.

(*d*) Sect. 20, proviso (ii), *infra*, p. 409. See Chap. I.

(*e*) *Gaunt* v. *I. R.*, [1913] 3 K. B. 395, *infra*, p. 313; and see per Rowlatt, J., in *I. R.* v. *Blott*, [1920] 1 K. B. 114, at p. 131, *infra*, p. 314.

(*ee*) *Rutherford* v. *I. R.*, [1926] S. C. 689; 10 Tax C. 683.

(*f*) See pp. 164, 167, *supra*.

Effect of Residence in the United Kingdom.

The question whether a person is "residing" or "resident" or "ordinarily resident" in the United Kingdom may be of importance for various purposes. For instance, with certain exceptions, a person not resident in this country cannot obtain any relief in respect of earned income or deduction of tax on assessable income, or relief in respect of insurance premiums and similar payments (*ff*). A person "residing" in the United Kingdom is liable to tax in respect of profits from any kind of property and of the profits of a trade, &c. carried on by him in this country or elsewhere (*g*); in regard to some "foreign possessions" he is taxable on the profits only so far as they are received in this country (*h*), but in respect of foreign securities, stocks, shares and rents, the extent to which he is to be charged may depend on whether he is or is not "ordinarily resident in the United Kingdom" (*h*). Liability to tax in respect of interest on the securities of a foreign State or British possession (*i*), and on the stocks of foreign companies (*k*), if payable in this country, as well as Indian annuities (*k*), if so payable, depends on "residence"; liability in respect of War Loan interest, &c. on "ordinary residence" (*l*).

A person "who is in the United Kingdom for a temporary purpose only, and not with any view or intent of establishing his residence therein," and has not resided here for six months in any year, is not taxable in respect of any foreign possessions or securities (*m*). Provisions for the assessment

(*ff*) Finance Act, 1920, s. 24, *infra*, p. 532; see Chap. I., pp. 12 *et seq.*

(*g*) Sched. D, r. (1) (a) (i) (ii), and Cases I. and II.; see *Colquhoun* v. *Brooks*, *supra*, p. 92; and *Smidth* v. *Greenwood*, *supra*, p. 103, [1921] 3 K. B., per ATKIN, L.J., at p. 594.

(*h*) Sched. D, Cases IV. and V.; see Chap. IX., *supra*, p. 221. The phrase "ordinarily resident" occurs also in connection with the place of charge, *vide infra*, p. 359.

(*i*) Sched. C, r. 2 (d), *supra*, p. 73.

(*k*) Sched. D, Misc. Rules, r. 7, *supra*, pp. 180, 188.

(*l*) Act of 1918, s. 46 (1), *supra*, p. 75. Appeals may be brought on questions of this kind arising under the provisions cited in notes (*ff*)—(*k*), *supra*, to the Special Commissioners, Act of 1924, s. 27; *vide infra*, p. 381.

(*m*) Sched. D, Misc. Rules, r. 2, *infra*, p. 510; *vide infra*, p. 272.

of non-resident persons through resident agents, trustees and so on apply to almost all forms of the tax (*n*). And a person whose ordinary residence is in the United Kingdom does not escape liability because he has left the country for the purpose only of occasional residence abroad (*o*).

Meaning of "Residence."

The question of residence with regard to companies and partnerships has been dealt with in connection with the assessment of the profits of the trade (*p*).

An individual can have two residences at the same time, although he cannot have two domiciles; and there is nothing in any of the material provisions which points to the "principal residence" as the governing fact. A place of residence is a place "to which it is quite easy for the person to resort as his dwelling-place whenever he thinks fit, and to set himself down there with his family and establishment . . . ; if he occupies that place of residence for a portion of the year . . . he is residing there in the course of that year" (*q*).

A merchant (*q*), therefore, or the servant of a commercial company (*r*), who lives most part of the year in a foreign country where he exercises his business or employment, but possesses a dwelling-house in the United Kingdom in which he lives each year for some months, is residing in this country (*s*). An American citizen who lives most

(*n*) See, *e.g.*, sect. 101, and General Rules, 4—14, *supra*, pp. 103 *sqq.*, and *infra*, pp. 273 *sqq.*

(*o*) General Rules, r. 3, *infra*, p. 517; *vide infra*, p. 273.

(*p*) *Supra*, pp. 90 *sqq.* A company may reside in more than one country, *Swedish Central Rail. Co.* v. *Thompson*, [1925] A. C. 495, *supra*, p. 91. It has not been decided that a partnership may do so.

(*q*) *Lloyd* v. *Sulley* (1884), 11 R. 687; 2 Tax C. 37, per Lord President INGLIS. The actual decision in this case is in part overruled by *Colquhoun* v. *Brooks*, *supra*, p. 92; but the principles it lays down with regard to residence have been approved and followed in *I. R.* v. *Cadwalader* (1904), 7 F. 146; 5 Tax C. 101 (where the various decisions are reviewed); *Thomson* v. *Bensted*, [1919] S. C. 8; 7 Tax C. 137.

(*r*) *Thomson* v. *Bensted*, *supra*; cf. *Foulsham* v. *Pickles*, [1925] A. C. 458, *supra*, p. 231.

(*s*) *Lloyd* v. *Sulley*, *supra*; *Peel* v. *I. R.*, [1928] S. C. 205; 13 Tax C. 443; as to the amount on which such a merchant is assessable, see, however, *Colquhoun* v. *Brooks*, *supra*, p. 92. Cf. also *A.-G.* v. *Coote* (1817), 4 Price, 183.

part of the year in the United States, but leases a lodge and shootings in Scotland, where he lives for two months in each year during the shooting season, is "residing" in the United Kingdom (*t*), and cannot be said to be "in the United Kingdom for some temporary purpose only and not with any view or intent of establishing his residence therein" (*u*). In that phrase "'temporary' . . . . means that it is casual or transitory residence, as distinguished from a residence, of which there may be more than one, but which may be habitual or permanent" (*t*).

In the case (*x*) of a merchant carrying on business in India, who in most years spent several months with his wife and family in the United Kingdom and in a house possessed by his wife, but who had lived for the whole year of assessment at his usual residence in India, the decision that he was not "residing" in the United Kingdom appears to conflict with the principles on which the decision on this point in *Lloyd* v. *Sulley* proceeded, and to be of doubtful authority (*y*).

A sea captain having a house in Scotland where his wife and children live is "residing" in the United Kingdom, and not for a temporary purpose only (*z*), and he is "residing" even though he has been absent from the United Kingdom throughout the year of assessment (*a*).

Residence need not necessarily be in a fixed structure; and an American citizen who had lived for twenty years on a yacht anchored within a few hundred yards of the English shore was held to have been properly assessed under Schedule D as a person residing in the United Kingdom (*b*). In the above cases, the person in question has had "a residence" in this country, in the sense of a

(*t*) *I. R.* v. *Cadwalader, supra;* see per Lord McLaren, 5 Tax C. at p. 509; followed where the hunting-box used was not leased or owned by the taxpayer: *Loewenstein* v. *de Salis* (1926), 10 Tax C. 424.

(*u*) See now Sched. D, Misc. r. 2, *infra,* p. 510.

(*x*) *Turnbull* v. *Foster* (1904), 7 F. 1; 6 Tax C. 206.

(*y*) See per Lord Dundas in *Thomson* v. *Bensted, supra.*

(*z*) *Young* v. *I. R.* (1875), 2 R. 925; 1 Tax C. 57. See notes (*t*), (*u*), *supra.*

(*a*) *Rogers* v. *I. R.* (1879), 6 R. 1109; 1 Tax C. 225; if the decision in *Turnbull* v. *Foster, supra,* is right, then this case was wrongly decided.

(*b*) *Bayard Brown* v. *Burt* (1911), 5 Tax C. 667.

dwelling-house (or a yacht) to which he could or did resort; but this is not necessary, and a person who stays in hotels and so on may be resident in the United Kingdom, if his visits to this country form part of the person's habits of life and are sufficiently prolonged (*c*). In such circumstances, a person may be "ordinarily resident" as well as resident (*d*).

But the question is one of fact in each case, and a stay in hotels or in the houses of friends in this country is not by itself sufficient to establish "residence" if, on the surrounding circumstances, it is found that the visit is paid merely in the course of travel, and not as a part of the regular order of life (*e*).

Temporary presence in the United Kingdom or absence therefrom.

A person who has a residence in the United Kingdom has already been seen to be liable to income tax charged under Schedule D though he is only in this country for a small portion of the year (*f*), and although he has been absent for the whole year (*g*); but a person who "is" in the United Kingdom for some temporary purpose only, and not with any view or intent to establish his residence therein, is liable to tax on profits of foreign possessions or securities (*h*) if he "resides" in the United Kingdom for an aggregate of six months in the year, whether in one visit or in several visits (*i*).

(*c*) *Reid* v. *I. R.*, [1926] S. C. 589; 10 Tax C. 673; *Levene* v. *I. R.*, [1928] A. C. 217; *I. R.* v. *Lysaght, ibid.* 234.

(*d*) This was the point decided against the taxpayer in the cases cited in the last note and in *Peel* v. *I. R., supra.* The nature of "ordinary residence" has been considered *supra,* p. 222.

(*e*) *I. R.* v. *Zorab; I. R.* v. *Brown* (1926), 11 Tax C. 289, 292; the subsequent decision in *Levene* v. *I. R.* does not affect the statement in the text. In *Levene's* case the Commissioners came to an opposite finding of fact, which was also upheld.

(*f*) *Lloyd* v. *Sulley; I. R.* v. *Cadwalader; Thomson* v. *Bensted; Young* v. *I. R., supra.*

(*g*) *Rogers* v. *I. R., supra;* see, however, *Turnbull* v. *Foster* and remarks thereon, *supra,* note (*a*).

(*h*) See Chap. VIII.

(*i*) Sched. D, Misc. Rules, r. 2, *infra,* p. 510. The word "resides" is obviously used in a different sense from that of "residence" in the earlier part of the rule, and corresponds with "is" in that part.

On the other hand, a British subject whose ordinary residence has been in the United Kingdom purports to be made liable to tax upon the whole of his income (from a number of specified sources) although he has left the United Kingdom for the purpose only of occasional residence abroad (*l*). The language of this rule is very obscure; it clearly cannot impose on such a person a higher charge of tax than if he had remained in this country; and it appears to serve no other purpose than to show (if it be necessary to do so) that the occasional absence of a resident does not excuse him from liability to tax.

Trustees and Agents chargeable for Beneficiaries and Principals.

Provision is made in a series of rules (*m*) for the assessment and charging of tax due from persons who possess sources of income but who for various reasons cannot make returns or cannot be assessed in the names of persons who act for them in one capacity or another. It is important to note that these rules are merely administrative provisions, and do not impose any substantive liability to the tax; nor do they enlarge or restrict any such liability (*n*). "They really are machinery for enabling the Crown, in common cases, to get the income tax which is properly payable" (*o*). Moreover, "this section (*p*) is a collecting section and not a taxing section, and there is no reason in principle why it should not receive a liberal interpretation" (*q*).

If the Crown can get the income tax from the person primarily liable, the mere fact that he belongs to a class of

(*l*) General Rules, r. 3, *infra*, p. 517.

(*m*) General Rules, rr. 4—14, *infra*, p. 518; s. 101, *infra*, p. 426.

(*n*) *R.* v. *Newmarket Commrs., Ex parte Huxley*, [1916] 1 K. B. 788; *Drummond* v. *Collins*, [1915] A. C. 1011, *supra*, p. 235; *Greenwood* v. *Smidth*, [1922] 1 A. C. 417, *infra*, p. 276.

(*o*) *Ex parte Huxley*, per COZENS-HARDY, M.R., at p. 797.

(*p*) Sect. 41 of the Act of 1842, the precursor of Rules 4, 5, and 13 of the General Rules in the Act of 1918.

(*q*) Per Lord PARKER in *Drummond* v. *Collins*, at p. 1019.

persons on behalf of whom a trustee or agent is usually assessed does not free him from liability (*r*). A trustee may be taxable for income received by him, which he is obliged to hand over to the beneficiary as capital (*rr*).

Income of Infants and other Incapacitated Persons.

The income of any "incapacitated person" (a term which means "any infant, married woman, lunatic, idiot or insane person" (*s*)), if he is himself incapable of making a return or cannot be assessed, is to be assessed and charged in the names of the trustee, guardian, tutor, curator or committee having the control of his property, whether the incapacitated person resides in the United Kingdom or not (*t*). But there are separate provisions as to married women (*u*). The person so chargeable is answerable for all matters to be done with regard to assessment and payment of tax (*x*) and is to deliver statements of profits (*y*); he may retain sufficient to pay the tax out of money coming into his hands, and is indemnified for all such payments made in pursuance of the Act (*z*).

An infant who earns an income by his own skill is capable of making a return and of paying the tax; if he has no guardian or trustee, he does not thereby escape assessment, but is liable personally (*a*).

In order to make a guardian chargeable on behalf of an infant, it is not necessary that he should have control of

(*r*) *Ex parte Huxley, supra; Tischler* v. *Apthorpe* (1885), 2 Tax C. 89; *supra*, p. 108. (*rr*) *Reid's Trees.* v. *I. R.*, [1929] S. L. T. 372, *supra*, p. 211.

(*s*) See definition in sect. 237, *infra*, p. 472.

(*t*) General Rules, rr. 4, 5; when r. 5 says the assessment is to be "to the like amount" as if "such non-resident person . . . were resident," it merely means that his income shall not bear less tax because he cannot be reached personally; cf. remarks on r. 3, *supra*, p. 273. A parent, guardian or tutor is also by sect. 161 (1), *infra*, p. 451, made liable for tax in default of payment by an infant; but that provision adds little to the rules above cited, for it makes the parent, &c. liable only to the extent to which he receives money in the infant's behalf: *R.* v. *Newmarket Commrs., Ex parte Huxley, supra*, per PHILLIMORE, L.J., [1916] 1 K. B. at p. 801.

(*u*) *Vide infra*, p. 278. (*x*) Rule 13, *infra*, p. 520.

(*y*) Sect. 101, *infra*, p. 426. (*z*) Rule 14, *infra*, p. 520.

(*a*) *Ex parte Huxley, supra;* the taxpayer was a successful jockey. The liability of trustees with regard to income tax on an infant's behalf was incidentally discussed in *I. R.* v. *Longford: I. R.* v. *Pakenham*, [1928] 1 K. B. 118; [1928] A. C. 252, *infra*, p. 343.

the property or concern from which the infant's income is derived, so long as he receives money of the infant; and where remittances were made to this country by trustees residing abroad for the maintenance and education of infants residing here, and were received by their mother and guardian, she was held to be assessable in respect of the sums so received (*b*).

Incomes of Non-Resident Persons Generally.

Persons not resident (other than "incapacitated persons") if they are "carrying on a trade in the United Kingdom" (*c*) are assessable and chargeable in the name of any factor, agent, receiver, branch or manager, whether such factor, &c. has receipt of the profits or gains or not (*d*); all profits or gains arising directly or indirectly through such factorship, &c. are to be included in the assessment (*e*). But these two rules do not extend the scope of the tax; the first merely extends the method of carrying out the charge imposed by Schedule D, and the second gives effect to that extension. Accordingly, where the trade of the non-resident is not "carried on in the United Kingdom" (*f*), the fact that he has what may be described as a "branch" in the United Kingdom is not sufficient to make him taxable on the profits of the trade (*g*).

(*b*) *Drummond* v. *Collins*, [1915] A. C. 1011, *supra*, p. 235. The observations of Lord SUMNER in *I. R.* v. *Longford*, [1928] A. C. at p. 260, were doubtless intended to be read subject to that decision. See also *Fry* v. *Shiel's Trustees*, [1915] S. C. 159; 6 Tax C. 583; *supra*, p. 18.

(*c*) The subject of agency in connection with the carrying on of trade is considered *supra*, pp. 102 *sqq*.

(*d*) General Rules, rr. 5, 6, *infra*, p. 518; as to the construction of Rule 5 see note (*t*) on p. 274. The non-resident local board of a British company cannot itself be assessed in the name of an agent: *Aramayo Francke Mines, Ltd.* v. *Eccott*, [1925] A. C. 634; *supra*, p. 104; see also *Scales* v. *Atalanta S.S. Co.* (1925), 41 T. L. R. 591.

(*e*) Rule 6.

(*f*) See note (*c*), *supra*.

(*g*) *Greenwood* v. *Smidth*, [1921] 3 K. B. 583; [1922] 1 A. C. 417, *supra*, p. 109; sub-sects. (1) and (2) of sect. 31 of the Finance (No. 2) Act, 1915, 5 & 6 Geo. 5, c. 89, which were discussed in that case, were the precursors of Rules 5 and 6 of the General Rules in the Act of 1918.

A special and somewhat drastic provision (*h*) is made for cases where a resident person carries on business with a non-resident (not being a British subject or a British, Indian, Dominion, or Colonial firm or company) and the non-resident substantially controls the resident person so as to reduce the profits of the latter to nothing, or to something less than the ordinary profits which might be expected to arise from that business if it were not controlled; in such a case the resident person is assessable as if he were an agent of the non-resident.

This rule 7 was first enacted as sub-sect. (3) of sect. 31 of the Finance (No. 2) Act, 1915 (*i*), and that sub-section has been held to "introduce a remarkable extension of the scope of the income tax, because it provides that a person in the position [described], although he is not an agent, may nevertheless be charged as if he were an agent," and that he shall be "taxable in respect of a notional business which is not carried on in the United Kingdom" (*k*).

It is submitted that as far as the income tax is concerned this decision is not consistent with that in *Greenwood* v. *Smidth* (*l*); that to read sub-sect. (3) of sect. 31 of the Act of 1915 as largely extending the scope of the tax, while sub-sects. (1) and (2) are read as merely extending the method of carrying out the charge, is to introduce a violent break in the continuity of sect. 31 which is not rendered necessary by its language; and that sub-sect. (3) (*m*), with the two following sub-sections, was intended only to set up an effectual machinery for assessment and collection in cases where the non-resident person does in fact carry on a trade in the United Kingdom, but does so (in pursuance of such an arrangement as is there described) by means of a resident person who cannot be described as either a "factor, agent, receiver, branch or manager."

(*h*) Rule 7.

(*i*) See note (*g*), *supra*.

(*k*) *Gillette Safety Razor, Ltd.* v. *I. R.*, [1920] 3 K. B. 358; see per ROWLATT, J., at pp. 374, 375—the case arose upon excess profits duty.

(*l*) See note (*g*), *supra*.

(*m*) Now Rule 7. Rules 8 and 9 are the successors of sub-sects. (4) and (5) of sect. 31 of the Act of 1915; Rules 10 and 11 of sub-sects. (6) and (7).

Apart from such an arrangement as is last mentioned, these rules do not apply so as to make a non-resident person chargeable in the name of a broker or general commission agent, or of an agent not being an authorised person carrying on the regular agency of the non-resident, in respect of profits arising from sales or other transactions carried out through such broker or agent (*n*). Nor does any sale or other transaction between two non-resident parties give rise to a liability to assessment in the name of a resident person under these rules (*o*). The making of the actual contracts of sale is among the transactions referred to in Rules 10 and 11 (*oo*).

The agent or other person chargeable is answerable for all matters with regard to assessment and payment of the tax, and is liable to make returns; he may retain sufficient to pay it out of money coming into his hands, and is indemnified to that extent (*p*).

Where the Commissioners consider that the true amount of the profits of the non-resident cannot readily be ascertained, they may decide to assess the non-resident person on a percentage of the turnover (*q*), and the resident person may be required to furnish returns of the business done through him or with him by the non-resident person (*r*); and either the resident or the non-resident may require the question of the percentage to be referred to a referee (*s*).

Where the non-resident person is a manufacturer or producer of foreign goods or produce, and is assessed in the name of a branch, manager, agent, factor, or receiver, the person in whose name the assessment is made may apply

(*n*) Rule 10, *infra*, p. 519. In *Wilcock* v. *Pinto*, [1925] 1 K. B. 30; *Gavazzi* v. *Mace, &c.* (1926), 135 L. T. 634; *Maclaine* v. *Eccott*, [1926] A. C. 424; *Belfour* v. *Mace* (1928), 138 L. T. 338; *Tarn* v. *Scanlan, &c.*, [1928] A. C. 34, *supra*, pp. 104—111, the agents were held to be such authorised persons; and Finance (No. 2) Act, 1915, s. 31 (6), or Rule 10 (see last note), afforded no protection. As to brokers, see Finance Act, 1925, s. 17, *infra*, p. 573.

(*o*) Rule 11; *Maclaine* v. *Eccott, supra*. See p. 104, note (*p*).

(*oo*) See the case last cited.

(*p*) Rules 13, 14, and s. 101.

(*q*) Rule 8; *vide supra*, p. 104.

(*r*) Rule 8.

(*s*) Rule 9 (2); as to appeals in cases of this kind, *vide infra*, p. 392.

to have the profits of manufacture or production eliminated, so that the assessment will be reduced to the amount of the profits which a merchant or retailer would have made (*t*).

The whole of the above rules must be read subject to the general principle (*u*), that if the non-resident person can himself be reached by the Inland Revenue authorities, they may require him to make returns and to pay the tax; the rules do not relieve the non-resident of any liability. Thus, where a partner in a foreign firm of wine-merchants spent a part of every year in England, and was directly assessed, he failed to upset the assessment on the ground that it ought to have been made upon his agents in England and not upon himself (*x*).

A partnership, the control and management of whose trade is situate abroad, is assessable in the name of any partner resident in the United Kingdom, upon the profits of any trade carried on by it in this country (*y*).

Receivers.

A receiver appointed by any Court in the United Kingdom which has the direction or control of any property charged with the tax is liable to make returns, to be assessed, and to pay tax as if the property were free from such direction and control (*z*).

Married Women.

"Married women" are included in the definition of "incapacitated persons" (*a*); but the rules (*b*) with regard to the assessment of such persons generally are very sub-

(*t*) Rule 12; the rule shows the manner of making such application.

(*u*) *Vide supra*, p. 273.

(*x*) *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89, *supra*, pp. 108, 274. It was not necessary for the purpose of this decision to establish that the partner's stay in England constituted residence in the United Kingdom; for he was held to be carrying on a trade in this country. See also *Whitney* v. *I. R.*, [1924] 2 K. B. pp. 614, 618; [1926] A. C. pp. 44, 53; *infra*, p. 349, note (*g*).

(*y*) *Vide supra*, p. 268.

(*z*) General Rules, r. 15, *infra*, p. 520. The question of priority in bankruptcy and winding-up is dealt with in connection with "Collection," *infra*, pp. 401 *sqq*.

(*a*) Sect. 237, *infra*, p. 472.

(*b*) *Supra*, p. 274.

stantially modified as regards married women. Apart from any special application, where a married woman is living with her husband, her profits are deemed to be the profits of the husband, and assessed in his name, and not in her own name, or in that of her trustee (*c*). The liability in such a case is upon the husband, and he has no claim against the wife's estate to recoup tax paid by him in respect of her income (*d*). But the wife is chargeable in the year of assessment in which her husband dies, in respect of income from a source belonging to her (such as War Loan Stock) which is assessed according to the profits of the preceding year (*e*). The tax is calculated upon the joint income (*f*); but relief is given in respect of 225*l.*, together with a limited deduction if the wife has an earned income (*g*).

A married woman may be "living with her husband" though they are actually in different places for reasons of public duty, or of business, or even of pleasure; conversely, she may not be "living with" him, if they no longer have a common home, although there is no legal separation (*h*), or although they are merely residing in different places for reasons of health (*i*).

A married woman, not living with her husband, who acts as a sole trader, or is entitled to any property or profits for her separate use, is assessable in her own name as if she were not married (*j*); the fact that her husband is resident abroad will not free her from liability in respect of income from foreign possessions or securities (*k*). If, however, she

(*c*) General Rules, r. 16, proviso (1), *infra*, p. 520; *Bowers* v. *Harding*, [1891] 1 Q. B. 560, *supra*, p. 255. ROWLATT, J., in *Purdie* v. *Rex*, [1914] 3 K. B. 112, *infra*, at p. 117, points out the danger of treating this proviso as if it were "a substantive enactment"; but as it is the sole foundation for the practice of aggregating the incomes of a husband and wife, which brings in a great sum to the State every year, the writer has ventured so to treat it; see per PETERSON, J., in *In re Ward*, [1922] 1 Ch. 517, at p. 520. (*d*) *In re Ward*, *supra*.

(*e*) *Leitch* v. *Emmott*, [1929] W. N. 139, *supra*, p. 210; see note (*j*), *infra*.

(*f*) See *Walker* v. *Howard* (1927), 138 L. T. 167, *supra*, p. 210.

(*g*) Finance Act, 1920, s. 18; Act of 1927, s. 40 (1), *supra*, p. 11. See also p. 281.

(*h*) *Eadie* v. *I. R.*, [1924] 2 K. B. 198.

(*i*) *Derry* v. *I. R.*, [1927] S. C. 714; 13 Tax C. 30.

(*j*) Rule 16, substantive part read with proviso (1); *Leitch* v. *Emmott*, *supra*.

(*k*) *Derry* v. *I. R.*, *supra*; see Chap. VIII.

lives in the United Kingdom, and receives from her husband or through him, or from his property, or on his credit, any allowance or remittance from property outside the United Kingdom, she is to be assessed in respect of that allowance or remittance as agent of her husband (*l*).

Where the married woman is living with her husband, the right to deduct tax against a payment of dividend by a company, and apparently against any other payment against which tax is deductible (*m*), applies in her case (*n*) exactly as it does in that of any other person (including a married woman living separately).

A husband or wife may claim to be assessed separately (*o*); but as a separate assessment does not in general make the parties liable to pay less tax than if they are assessed together (*p*), this privilege is of little value except for convenience in accounting and so forth; but at any rate it might, if utilized, prevent the husband from being made liable to pay tax upon the wife's income after her death (*q*).

The application for a separate assessment for any year must be made within six months before 6th July in that year (*r*); returns for the purpose may, however, be required at any time (*s*). In such a case, claims for allowances and reliefs, including that which relates to insurance and similar payments (*t*), may be made as if the parties were not married (*u*); but the result will merely be to distribute the amount of the allowance, &c. between husband and wife; and the total amount allowed or repaid is not to exceed what

(*l*) Rule 16, proviso (2); the rest of this proviso seems to have little effect apart from the substantive rule (see per Lord BLACKBURN in *Derry* v. *I. R.*, *supra*), unless indeed a "temporary" absence of the husband allows a wife (even where there is no intention of permanent separation) to claim a separate assessment for allowances and for remittances from property outside the United Kingdom to which she is entitled in her own right.

(*m*) As to deduction at the source generally, *vide supra*, pp. 55, 182, 264 *sqq.*

(*n*) *Purdie* v. *Rex*, [1914] 3 K. B. 112.

(*o*) General Rules, r. 17, *infra*, p. 520. As to sur-tax, *vide infra*, p. 340.

(*p*) Finance Act, 1920, s. 25 (1) (b), (c), as amended, *infra*, p. 533; see Chap. I.

(*q*) As was the case in *In re Ward*, *supra*, p. 279; see, however, *I. R.* v. *Portman*, *infra*, p. 341.

(*r*) General Rules, r. 17 (1), *infra*, p. 520.

(*s*) Rule 17 (2); Act of 1920, s. 25 (1) (d), (2).

(*t*) See pp. 11, 21, *supra*.

(*u*) Act of 1920, s. 25 (1) (a).

it would have been if no such application had been made; relief for life assurance and deferred annuity payments is credited to the party who made them, and that in respect of a dependent relative or child to the party who maintains them (*v*).

Marriage does not defeat the right to relief in respect of earned income, nor the substituted relief given to elderly persons (*w*), but the earned incomes of husband and wife living together are aggregated for the purpose of ascertaining the amount of either deduction (*x*); an additional deduction is, however, made of five-sixths of the wife's earned income up to a maximum of 45*l*. (*y*).

Death.

An executor or administrator of a deceased person is liable for the tax charged on the deceased (*z*), and may deduct all payments of tax out of the assets and effects of the deceased (*a*); it may be doubted whether the liability extends beyond the amount of those assets and effects (*b*). In addition to this general rule, specific cases arising upon death are provided for as follows:—

Where an owner of lands, &c. who was himself in occupation at the time when an assessment under Schedule A (*c*) was made, dies before payment of the tax, the heirs, executors, administrators, assigns or other persons who became entitled at the death become liable for arrears and for the current tax calculated to the time of death, and

(*v*) Act of 1920, s. 25 (1) (b), (c); the reliefs and deductions referred to are indicated in Chap. I.

(*w*) Act of 1918, s. 14 (4), *vide supra*, p. 19.

(*x*) Allowed by Act of 1925, s. 15; Act of 1927, s. 40 (1), *vide supra*, p. 11.

(*y*) Act of 1920, s. 18 (2), as amended, *infra*, p. 530.

(*z*) Sect. 161 (1), *infra*, p. 451; see also as to "Collection" and "Recovery," *infra*, p. 398; and cf. *Smith* v. *Williams*, [1922] 1 K. B. 158, *infra*, p. 382.

(*a*) Sect. 161 (2).

(*b*) Cf. the observations of PHILLIMORE, L.J., in *R.* v. *Newmarket Commrs., Ex parte Huxley, supra*, p. 273. See also the Trustee Act, 1925 (15 Geo. 5, c. 19), s. 27 (1); the provisions of that Act bind the Crown: sect. 71 (4). The question of priority in the case of an insolvent estate is one of collection, and is dealt with *infra*, p. 401.

(*c*) See Chap. II., especially pp. 48—50.

thereafter to the end of the year without any new assessment (*d*). The tax due under Schedule A from an occupier at the time of assessment who was not an owner (*e*) and that due under Schedule B (*f*) are not dealt with in this subsection, and are therefore due from executors and administrators only. Any dispute between the executors of a former occupier and his successor in occupation as to the proportion due from each is to be settled by the General Commissioners (*g*).

In regard to profits of trades and professions (*h*), the executors and administrators are made liable for any tax which becomes payable for any year of assessment by reason of the discontinuance of the trade, &c. (*i*), or by reason of a change of partnership or a succession (*j*), or of an alteration in the accounting period (*k*); the notice requiring a change of partnership to be treated as a discontinuance may be given by the legal representatives of the deceased (*l*).

Executors and administrators are made liable for any tax which becomes payable for any year of assessment by reason of the cesser of any source, or part of any source, the income of which is chargeable under Case III., Case IV. or Case V. of Schedule D (*m*).

Where the deceased held an office, employment or pension taxable under Schedule E, his executors and administrators are liable for any tax which becomes payable for any year of assessment by reason of his ceasing to hold it (*n*).

If a statement of all the profits (chargeable under whatever Schedule) has not been made before the death, an

(*d*) Sect. 161 (3). (*e*) See Chap. II.

(*f*) See Chap. III.

(*g*) General Rules, r. 22, *vide supra*, p. 54.

(*h*) Chaps. V. and VI.

(*i*) Act of 1926, s. 31 (2), *vide supra*, p. 165.

(*j*) Sched. D, Cases I. and II. r. 11 (3), as amended, *vide supra*, p. 167.

(*k*) Act of 1927, s. 34 (4), *vide supra*, p. 161; this provision applies also where profits of agriculture or woodlands are assessed under Sched. D.

(*l*) Rule 11 (1), proviso, *vide supra*, p. 168.

(*m*) Act of 1926, s. 30, proviso (i), read with sect. 31 (2); see Chaps. VII. and VIII.

(*n*) Act of 1927, s. 45 (6), (7), *infra*, p. 606; Sched. E, r. 2, *infra*, p. 513; *vide supra*, p. 256.

assessment may be made upon the executors or administrators in respect of all the profits which arose or accrued to the deceased before his death (*o*), except, of course, profits taxed at the source by way of deduction (*p*). The tax assessed is payable out of the estate (*o*).

Although assessments, additional assessments and surcharges may now be amended or made within six years after the end of the year of assessment to which they relate (*q*), the time is limited in the case of a deceased person to the end of the third year following the year of assessment in which he died (*r*).

The provisions imposing an obligation to make returns on the representatives of deceased persons, for income tax proper and for sur-tax, are indicated in Chapter XV.

(*o*) General Rules, r. 18, *infra*, p. 521. It is so payable also in the cases referred to in notes (*i*)—(*n*), *supra*.

(*p*) To assess the executors separately on such profits would be to tax these twice over.

(*q*) *Vide infra*, p. 369.

(*r*) Act of 1923, s. 29 (3), *infra*, p. 567. See *Simpson* v. *Maurice's Exors.* (1929), 45 T. L. R. 581.

CHAPTER XII.

EXEMPTIONS AND ABATEMENTS IN FAVOUR OF CHARITABLE AND OTHER BODIES.

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Introductory.

Of the exemptions and allowances provided in favour of "charitable" bodies, and of public institutions and societies of various kinds, the most important are those which affect "charities" and "trustees for charitable purposes." These and similar phrases are used in a legal sense, which is different from their ordinary or colloquial meaning (*a*), and is wide enough to include some, if not all, of the institutions and societies to which specific exemptions or allowances are given. Again, in practice, some of these specific provisions appear to confer a relief very similar to that which is given by the corresponding general provisions (*b*). Consequently, it has been thought convenient in this chapter first to deal with those provisions which affect charities generally, and afterwards to deal in turn with those which affect particular bodies.

(*a*) *Special Commrs.* v. *Pemsel,* [1891] A. C. 531, *infra,* p. 286.
(*b*) *Vide infra,* p. 293.

Stated shortly, then, the general exemptions apply:—

(1) To tax in respect of lands owned and occupied by "a charity" (*c*).

(2) To tax in respect of the rents and profits of lands owned, but not occupied, by "trustees for charitable purposes" (*d*).

(3) To tax in respect of lands occupied by "a charity" (*e*).

(4) To tax in respect of dividends, &c. forming part of the income of a "body or trust established for charitable purposes only" (*f*).

(5) To tax in respect of any yearly interest or other annual payment forming part of such income (*f*).

(6) To tax in respect of the profits of a trade carried on by "any charity," subject to certain conditions (*g*).

"*Charity*": "*Trustees for Charitable Purposes.*"

The difference in nomenclature appearing in the provisions just summarized does not denote any distinction in sense. The expression "any body of persons or trust established for charitable purposes only" appears in sect. 37 (1) (b) of the Income Tax Act, 1918 (*h*), in connection with exemption under Schedules C and D; the expression used in sect. 37 (1) (a) in connection with Schedule A is "trustees for charitable purposes" (*h*), and bears the same meaning as the former (*i*). In sect. 30 of the Finance Act, 1921, in connection with Schedules A, B and D, the expression "charity" is used, but is defined in the terms quoted from sect. 37 (1) (b) of the Act of 1918 (*k*). In each of

(*c*) Finance Act, 1921, s. 30 (1) (a), *infra*, p. 542; see Chap. II.

(*d*) Income Tax Act, 1918, s. 37 (1) (a), *infra*, p. 418; Act of 1926, s. 28, proviso, *infra*, p. 579; see Chap. II.; and as to the properties transferred from No. II. and No. III. of Sched. A, see Chaps. V. and VII.

(*e*) Act of 1921, s. 30 (1) (b); this applies to Sched. B, see Chap. III.

(*f*) Act of 1918, s. 37 (1) (b); see Chaps. IV., VII.

(*g*) Act of 1921, s. 30 (1) (c), as extended by Act of 1927, s. 24, *infra*, p. 542; see Chap. VI.

(*h*) *Infra*, p. 418; see note (*d*), *supra*.

(*i*) *R.* v. *Special Commrs., Ex parte University College of North Wales* (1909), 5 Tax C. 403.

(*k*) Act of 1921, s. 30 (3), *infra*, p. 543; see also Act of 1922, s. 30 (3), *infra*, p. 554.

these enactments, and throughout the Income Tax Acts, the expression "charitable purposes" bears the same meaning as in the general law of England (*l*). But if the purpose of the trust is to be found in a Scottish deed, the effect of the deed must be ascertained according to the law of Scotland in order to determine whether that purpose comes within the definition of charity; and in such a deed the phrase "charitable or benevolent purposes" means no more than "charitable purposes" in an English deed (*m*).

The following passage contains the accepted definition:—

"'Charity' in its legal sense comprises four principal divisions; trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law because incidentally they benefit the rich as well as the poor, as indeed every charity must do either directly or indirectly" (*n*).

The fact that some benefit may accrue to the members of a society, as such, is not sufficient, taken by itself, to prevent that society from being a charity established for charitable purposes only (*o*). Accordingly, the following bodies or trusts have been held, or admitted, to be qualified for exemption:—Trustees for purposes of maintaining the missionary establishments among the heathen nations of the Moravian Church (*p*); a university college (*q*); societies for the promotion of agriculture (*r*); a technical college set up

(*l*) *Special Commrs.* v. *Pemsel,* [1891] A. C. 531. Cf. also *I. R.* v. *Scott,* [1892] 2 Q. B. 152.

(*m*) *Jackson's Trees.* v. *L.-A.,* [1926] S. C. 579; 10 Tax C. 460, *infra,* note (*c*).

(*n*) Per Lord MACNAGHTEN in *Pemsel's Case,* [1891] A. C. at p. 583.

(*o*) *I. R.* v. *Yorks Agricultural Soc.,* [1928] 1 K. B. 611; *I. R.* v. *Peeblesshire Nursing Assn.,* [1927] S. C. 215, *infra,* note (*f*).

(*p*) *Special Commrs.* v. *Pemsel, supra.*

(*q*) *Ex parte University College of North Wales, supra.* It will be seen, *infra,* p. 289, note (*e*), that the University College succeeded in being treated not only as a "college," but also as "trustees, &c."

(*r*) *Royal Agricultural Soc.* v. *Wilson* (1924), 40 T. L. R. 763; see Act of 1924, s. 23, *infra,* p. 299; *I. R.* v. *Yorks Agricultural Soc., supra.*

to promote the efficiency of the woollen industry (*s*); a fund to stimulate public interest in music (*t*); religious and educational associations, and a company, one of whose objects was to provide accommodation for those associations, without profit (*u*). On the other hand, a trust whose purpose is to secure a certain line of legislation is not a charitable trust (*x*); nor a trust to bring about simplified spelling (*xx*). Such bodies as the General Medical Council (*y*), the Geologists' Association (*z*), and the Headmasters' Conference (*a*), are not entitled to exemption.

Another group, whose claims have been allowed, includes societies for the relief of the indigent among their own subscribers and their widows and children, where the relief cannot be claimed as a right (*b*); a trust for relieving poverty, for securing medical comforts, and for advancing education among tea planters and their families (*c*); a trust to set up a seaside boarding-house at reduced charges for members of the drapery and other trades (*d*); a trust for providing a temperance hotel (*e*); and an association to provide nursing at less than cost price, although in this case subscribers paid lower charges than non-subscribers (*f*). So a convalescent home belonging to a friendly society, and serving its members only, who are put to no expense when they use it, is none the less a "hospital" (*g*).

(*s*) *Scottish Woollen Technical College* v. *I. R.*, [1926] S. C. 934; 11 Tax C. 139.

(*t*) *I. R.* v. *Glasgow Musical Festival Assn.*, [1926] S. C. 920; 11 Tax C. 154.

(*u*) *R.* v. *Special Commrs., Ex parte Essex Hall,* [1911] 2 K. B. 434, *infra,* p. 289.

(*x*) *I. R.* v. *Temperance Council* (1926), 136 L. T. 27.

(*xx*) *Hunter's Trees.* v. *I. R.* (1929), 45 T. L. R. 344.

(*y*) *General Medical Council* v. *I. R.*, [1928] W. N. 98; 97 L. J. K. B. 578.

(*z*) *Geologists' Assn.* v. *I. R.* (1928), 7 A. T. C. 442. See also *Midland Counties Instn. of Engineers* v. *I. R.*, *ibid.* 448.

(*a*) *R.* v. *Special Commrs.* (1925), 41 T. L. R. 651.

(*b*) *I. R.* v. *Medical and Charitable Soc.; I. R.* v. *Medical Men's, Widows', &c. Soc.* (1926), 42 T. L. R. 612.

(*c*) *Jackson's Trees.* v. *L.-A., supra.*

(*d*) *I. R.* v. *Roberts' Marine Mansions Trees.* (1927), 43 T. L. R. 270.

(*e*) *I. R.* v. *Falkirk Temperance Café Trust,* [1927] S. C. 261; 11 Tax C. 353.

(*f*) *I. R.* v. *Peeblesshire Nursing Assn.*, [1927] S. C. 215; 11 Tax C. 335.

(*g*) *R. A. Order of Buffaloes* v. *Owens,* [1928] 1 K. B. 446; the decision was given under Sched. A, No. VI. r. 1 (c), *vide infra,* p. 293, but would also be applicable under sect. 37 (1) (a) of the Act of 1918, *infra,* p. 418.

A trust for the benefit of such persons, institutions or purposes as the settlor shall appoint, or in default of appointment for a specific purpose which is (*primâ facie*) a charitable purpose, is not a trust for charitable purposes only, until the power is exercised in favour of a charitable purpose (*h*).

Where a testator bequeathes the residue of his personalty to trustees for, or to a body of persons established for, charitable purposes, and the executors under the will receive the income thereof pending the final ascertainment and distribution of the residue, the property does not become that of the charitable trustees or body until the residue is distributed to them; but provision has now been made for treating a portion of the income accruing in the interval as income of the charity (*i*).

Lands Owned and Occupied by Charities.

In general, "charities" are entitled to exemption from tax under Schedule A in respect of lands owned and occupied by them (*k*), with the exception of any part which is in the use or enjoyment of a person whose total annual income from all sources (*l*) amounts to not less than 150*l.* (*m*). If the charity has to pay a "rent" or other annual payment in respect of such lands, that rent or payment is not within the exemption, and the payee is apparently taxable for it (*n*).

This provision does not apply to such lands as are mentioned in No. VI. (*o*) of Schedule A, that is, to certain

(*h*) *R.* v. *Special Commrs., Ex parte Rank's Trustees* (1922), 91 L. J. K. B. 662; 8 Tax C. 286; *after* such exercise of the power, the trust becomes one for charitable purposes only: *Jackson's Trees.* v. *L.-A., supra.*

(*i*) *Dr. Barnardo's Homes* v. *Special Commrs.*, [1921] 2 A. C. 1; see also *Marie Celeste, &c. Soc.* v. *I. R.* (1926), 43 T. L. R. 23; Finance Act, 1922, s. 30, *infra*, p. 554.

(*k*) Act of 1921, s. 30 (1) (a), *infra*, p. 542.

(*l*) See Chap. XIII.

(*m*) Sect. 30 (2).

(*n*) Sect. 30 (2). The word "rent" is presumably used to signify a payment comparable to a rent-charge; cf. Sched. A, No. VIII. r. 4 (2), *infra*, p. 487. The somewhat similar provision with regard to sewers contained in sect. 34 is considered more fully *infra*, p. 303.

(*o*) *Infra*, p. 483. The "allowances" conferred by No. VI. of Sched. A are discussed *infra*, p. 293.

lands belonging to colleges or halls in universities, hospitals, public schools or almshouses, and literary or scientific institutions. It appears to follow that lands (if there be such) owned and occupied by any of these specified bodies but not described in No. VI. are within the scope of the exemption created by sect. 30 (1) (a) of the Act of 1921. Any "charity" which is comparable to those specified in No. VI. (*e.g.*, a school which is not a "public school") is entitled to that exemption in respect of all lands owned and occupied by it, without regard to No. VI. (*p*).

If a charity "owns and occupies" any lands or hereditaments which were formerly grouped under No. III. or No. II. of Schedule A (*a*), but are now transferred to Schedule D, this exemption still applies, in spite of the transfer (*b*).

The exemption must be claimed from the revenue authorities in the prescribed form; if the claim is refused, an appeal may be brought to the Special Commissioners (*c*).

Rents and Profits of Lands Owned but not Occupied.

"Trustees for charitable purposes" enjoy an exemption from tax under Schedule A in respect of the rents and profits of any lands vested in them, so far as those rents and profits are applied to "charitable purposes" only (*d*). Although hospitals, public schools, and almshouses are also specifically mentioned in this connection, that mention does not cut down the meaning of the phrase "trustees for charitable purposes," and the authority of a university college is not prevented from enjoying this exemption (*e*).

(*p*) *Scottish Woollen Technical College* v. *I. R.*, [1926] S. C. 934; 11 Tax C. 139, *supra*, p. 287. (*a*) See Chap. V., p. 78; Chap. VII., p. 175.

(*b*) Act of 1926, s. 28, proviso, *infra*, p. 579.

(*c*) Act of 1925, s. 19 (1) (a), *infra*, p. 574; notice of appeal must be given within twenty-one days of the notice of decision on the claim, sect. 19 (2). As to appeals, *vide infra*, p. 375.

(*d*) Act of 1918, s. 37 (1) (a), *infra*, p. 418; this provision does not extend to lands occupied by the charity: *Maughan* v. *Free Church of Scotland* (1893), 3 Tax C. 207; *Ex parte Essex Hall*, [1911] 2 K. B. 434, *supra*, p. 287; but these are now provided for: see above. As to the Irish Free State, see p. 291, note (*q*).

(*e*) *R.* v. *Special Commrs., Ex parte University College of North Wales* (1909), 5 Tax C. 408, *supra*, p. 286.

The lands are to be assessed in the ordinary course in spite of the exemption (*f*); the tax will be deducted by the tenants in paying rent (*g*); and repayment is obtainable by a claim made in the prescribed form; against the refusal of a claim an appeal may be brought to the Special Commissioners (*h*).

This exemption applies where tax is deducted from the rent or royalties payable in respect of a quarry, mine, or other concern which has now been transferred from No. III. of Schedule A to Schedule D; and also where the profits of any of the miscellaneous hereditaments formerly grouped under No. II. are received by such bodies as are above indicated, in spite of the transfer (*i*).

Lands Occupied by Charities.

A charity is exempt from income tax under Schedule B (*j*) in respect of lands occupied by it (*k*). But the exemption does not apply in the case of lands occupied for the purpose of husbandry only, unless the work is mainly carried on by beneficiaries of the charity and the profits (if any) are applied solely for the purpose of the charity (*l*). The exemption does not extend to any parts of the lands (for whatever purpose occupied) which are in the use and enjoyment of a person whose total income from all sources (*m*) amounts to not less than 150*l*. (*n*).

(*f*) Sect. 37 (1) (a), proviso. (*g*) *Vide supra*, pp. 55, 262.

(*h*) Act of 1925, s. 19 (1), (a), *infra*, p. 574; notice of appeal must be given within twenty-one days of the notice of the decision, sect. 19 (2). The claim itself must be made within six years after the end of the year of assessment to which it relates, Act of 1918, s. 41, as amended by Act of 1923, s. 30 (1), *infra*, p. 567.

(*i*) Act of 1926, s. 28, proviso: see Chap. V., p. 78; Chap. VII., p. 175.

(*j*) See Chap. III.; the classes of land within the scope of Sched. B are indicated at pp. 64, 65.

(*k*) Act of 1921, s. 30 (1) (b), *infra*, p. 542. The claim must be made as prescribed, *vide supra*, p. 289, note (*c*). It is immaterial by whom the land is owned.

(*l*) Sect. 30 (1) (b), proviso. As to the meaning of "husbandry," see p. 70, *supra;* but note that this proviso deals with lands occupied for husbandry *only*. (*m*) See Chap. XIII.

(*n*) Sect. 30 (2); the exception with regard "to any rent payable or other annual payment to be made by any charity" is applied in terms to the exemption granted by sect. 30 (1) (b), but it is difficult to see what effect it can have in connection with Schedule B.

Dividends, Interest, Annual Payments.

Exemptions are created in respect of any interest, dividends, &c. taxable under Schedule C (*o*) and of any "yearly interest or other annual payment" taxable under Schedule D (*p*), provided that these form "part of the income of any body of persons (*q*) or trust established for charitable purposes only," or are prevented by rules or regulations under an Act of Parliament, charter, decree, deed of trust, or will from being applied to any purpose other than charitable; and so far as they are applied to charitable purposes only (*r*). The meaning of "charitable purposes" has already been indicated (*s*). The exemption above described applies in favour of the authority of a college in a university, as to any other such body (*t*).

The presence of the words "yearly interest" in the provision last cited does not restrict the meaning of "annual payment" (*u*); the profits of a trade carried on by trustees who hand them over each year to another trust which is established for charitable purposes only, may be an annual payment, and the charitable trust is entitled to repayment of the income tax which has been paid by the trading trustees out of the profits before handing over the balance (*u*). But the profits of a trade carried on by the charitable body itself are not an "annual payment" (*x*).

(*o*) See Chap. IV.

(*p*) The meaning of these terms is discussed *supra*, pp. 182 *sqq*. Interest on daily balances at a bank is not yearly interest within the meaning of the exemption: *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 381, *supra*, p. 184.

(*q*) Defined in sect. 237, *infra*, p. 471. A special provision with regard to charitable bodies established in the Irish Free State is contained in Act of 1923, s. 21, and extended by Act of 1925, s. 21, *infra*, pp. 563, 575.

(*r*) Sect. 37 (1) (b), *infra*, p. 418; the syntax of this sub-section is confused, but it is hoped that the paraphrase in the text does not misrepresent its meaning. As to the method and time of claiming repayment, and as to appeal, see p. 290, note (*h*).

(*s*) *Supra*, p. 286.

(*t*) *Ex parte University College of North Wales*, *supra*, p. 289.

(*u*) *R.* v. *Special Commrs.*, *Ex parte Shaftesbury Homes*, [1923] 1 K. B. 393, *infra*, p. 293. As to payments made by persons carrying on concerns transferred from No. III. of Sched. A, see p. 290, *supra*.

(*x*) *Brighton College* v. *Marriott*, [1926] A. C. 192; see below.

There is a provision in Schedule C against deduction of tax under the rules as to dividends payable by the Bank of England where a certificate has been given to the Bank under sect. 28 of the Charitable Trusts (Amendment) Act, 1855 (*z*).

Profits of Trade: Schedule D.

The profits of a trade carried on by a charity itself are exempt (i) if the trade is exercised in the course of the actual carrying out of a primary purpose of the charity, or (ii) if the work in connection with the trade is mainly carried on by beneficiaries of the charity; in either case the profits must be applied solely for the benefit of the charity (*a*).

Thus, an asylum or a hospital which takes in paying patients (*b*), or a public school which receives payments for the education or board of pupils (*c*), are exempt in respect of the profits so made, if they are wholly devoted to the maintenance of the hospital or the school. The exemption in class (i) may also extend to trustees who publish and sell a hymn-book and distribute the proceeds to widows and orphans, and to a society which carries on booksellers' shops in pursuance of its object of diffusing religious literature (*d*); but not, it would seem, to a hospital which lets out rooms for entertainments (*e*), nor to an institution for religious and social improvement which carries on a restaurant (*f*), because the trade can hardly be said to be exercised as described in the section.

As regards class (ii), the condition as to the application of profits is probably not satisfied where the individual bene-

(*z*) See Rule 10 of those rules, *infra*, p. 519; and *vide supra*, p. 76. The provision does not appear to affect dividends payable out of foreign revenues.

(*a*) Act of 1921, s. 30 (1) (c), as substituted by Act of 1927, s. 24, *infra*, p. 542, passed after the decision in *Brighton College* v. *Marriott*, *infra*. As to the method of claiming exemption, see p. 289, note (*c*), *supra*.

(*b*) Held taxable in *St. Andrew's Hospital, Northampton* v. *Shearsmith* (1887), 19 Q. B. D. 624; *Needham* v. *Bowers* (1888), 21 Q. B. D. 436.

(*c*) In *Brighton College* v. *Marriott*, [1926] A. C. 192, *supra*.

(*d*) In *Trustees of Psalms and Hymns* v. *Whitwell* (1890), 3 Tax C. 7; and *Religious Tract and Book Soc.* v. *Forbes*, *ibid.* 415, *supra*, p. 83.

(*e*) *Coman* v. *Rotunda Hospital*, [1921] 1 A. C. 1.

(*f*) *Grove* v. *Young Men's Christian Assn.* (1903), 4 Tax C. 613.

ficiaries are allowed to retain for themselves the profits they help to earn. The performers in a musical competition have been held to be "beneficiaries of the charity" (*g*).

Where a trade of any kind is carried on by separate trustees who hand over the yearly balance of profits to a "body of persons or trust established for charitable purposes only," that body is entitled to repayment (*h*).

"*Allowances*" *under Schedule A.*

The general exemption under Schedule A in respect of lands owned and occupied by a charity does not extend to lands mentioned in No. VI. (*i*). By that group of rules "allowances" are made under Schedule A in favour of colleges and halls in any university, of hospitals, public schools and almshouses, and of literary and scientific institutions (*j*). As regards all but the last class, these allowances take the form of a remission of the tax charged on their public buildings and offices (subject to a certain restriction indicated below), and an allowance of the amount expended on repairs of their public buildings and offices (without that

(*g*) *I. R.* v. *Glasgow Musical Festival Assn.*, [1926] S. C. 920, *supra*, p. 287.

(*h*) *R.* v. *Special Commrs., Ex parte Shaftesbury Homes*, [1923] 1 K. B. 393, *supra*, p. 291.

(*i*) Act of 1921, s. 30 (1) (a), *supra*, p. 288.

(*j*) Sched. A, No. VI., *infra*, p. 483. The application of these rules is of diminished importance since the passing of sect. 30 (1) (a) of the Act of 1921; but as to the meaning of "college or hall," see *College of Preceptors* v. *Jenkins* (1919), 7 Tax C. 162; and cf. *Bain* v. *Free Church of Scotland* (1897), 3 Tax C. 537; of "hospital," see *Needham* v. *Bowers* (1888), 21 Q. B. D. 436; *Cawse* v. *Nottingham Lunatic Hospital*, [1891] 1 Q. B. 585; *Royal, &c. Order of Buffaloes* v. *Owens*, [1928] 1 K. B. 446, *supra*, p. 287; and cf. *St. Andrew's Hospital* v. *Shearsmith* (1887), 19 Q. B. D. 624, *supra*, p. 292; of "public school," see *Blake* v. *Mayor, &c. of London* (1887), 18 Q. B. D. 437; 19 Q. B. D. 79; *Ackworth School (Governors)* v. *Betts* (1915), 6 Tax C. 642; *Cardinal Vaughan Memorial School* v. *Ryall* (1920), 7 Tax C. 611; *Bain* v. *Free Church of Scotland, supra; Scottish Woollen, &c. College* v. *I. R.*, [1926] S. C. 114, *supra*, p. 287; *Birkenhead School* v. *Dring* (1926), 43 T. L. R. 48; *Ereaut* v. *Girls Public Day School Trust* (1929), 45 T. L. R. 557; of "almshouse," see *Mary Clark Home (Trustees)* v. *Anderson*, [1904] 2 K. B. 645; of "literary or scientific institution," see *Manchester (Mayor, &c.)* v. *McAdam*, [1896] A. C. 500; *Musgrave* v. *Dundee Magistrates* (1897), 34 S. L. R. 702; 3 Tax C. 552; *Sulley* v. *Royal College of Surgeons, Edinburgh* (1892), 19 R. 751; 3 Tax C. 173; *Farmer* v. *Juridical Soc. of Edinburgh*, [1914] S. C. 731; 6 Tax C. 467.

restriction) and of gardens, walks and grounds repaired and maintained out of their funds.

In the case of colleges and halls, the tax on any portion of the public buildings and offices occupied by any individual member thereof, or by any person paying rent, and in the case of hospitals, public schools and almshouses, the tax on any portion occupied by any individual officer or the master thereof, whose total annual income for income tax purposes is 150*l.* or more, is not remitted (*jj*). In the former case, the gardens, walks and grounds must be for recreation only; in the latter, for recreation or sustenance.

A hospital authority may, nevertheless, be liable under Schedule D in respect of the profits derived from letting out parts of their premises (*k*).

In regard to literary and scientific institutions, there is a remission of the tax charged on any building being the property of such an institution, and used solely for its purposes, in which no payment is made or demanded for any instruction there afforded by lectures or otherwise, and as far as not occupied by an officer of the institution or by any person paying rent for the same (*l*). The word "property" does not here import legal ownership; and a building which is appropriated exclusively to the use of a literary institution and cannot legally be applied to any other purpose is the property of that institution within the meaning of the rule (*m*).

A person who is bound by the terms of his employment to reside in a portion of any such building as is referred to in the above rules has been held to occupy that portion within the meaning of those rules (*n*). Where a person resides in

(*jj*) No. VI. r. 1 (a)—(d), *infra*, pp. 483, 484; cf. Act of 1921, s. 30 (2), *supra*, p. 288. If the school is let to the education authority, no relief is given under this provision: *Bryan* v. *Trustees of Glasgow Arch-Diocese* (1922), 8 Tax C. 276; but sect. 37 (1) (a) may apply, in some such cases at any rate: see p. 289.

(*k*) *Coman* v. *Rotunda Hospital*, [1921] 1 A. C. 1, *supra*, p. 292.

(*l*) No. VI. r. 1 (e); see *Musgrave* v. *Dundee Magistrates*, *supra*, p. 293.

(*m*) *Manchester* (*Mayor*) v. *McAdam*, [1896] A. C. 500; see per Lord HERSCHELL at p. 509.

(*n*) *Sutton's Hospital* (*Governors*) v. *Elliott*, [1922] 2 K. B. 1; the point

any portion rent-free, the annual value of that privilege cannot be included in calculating his income for the purposes of the allowance to hospitals, &c. (*o*).

The above "allowances" are granted by the General Commissioners (*p*), and may, therefore, be claimed in making returns, and in appeals against assessments.

Churches and Chapels: Schedule C.

An exemption is given from tax under Schedule C in respect of any interest, annuities, dividends and shares of annuities payable out of any public revenue (*q*), which stand in the names of trustees and are applicable solely towards the repairs of any cathedral, college, church or chapel or any building used solely for divine worship, so far as they are in fact applied to those purposes (*r*). Observe in cases not covered by any other provision, that the exemption here referred to does not give relief in respect of interest or other annual payments which are charged under Schedule D.

British Museum.

The trustees of the British Museum are exempt from tax under Schedule A in respect of lands and tenements vested in them (whether occupied by them or not) (*s*); in regard to dividends of stock vested in them or in any

had been dealt with to some extent in *Bray* v. *Lancashire JJ.* (1889), 22 Q. B. D. 484, *supra,* p. 38; see per POLLOCK, B., at p. 488. But it is difficult to reconcile this passage with the Crown's contention that the justices were in occupation of the whole building, and with the admissions set out in 2 Tax C. at p. 428.

(*o*) No. VI. r. 1 (c). Cf. *Tennant* v. *Smith,* [1892] A. C. 150, *infra,* p. 311.

(*p*) No. VI. r. 2, *infra,* p. 484; sect. 19 of the Act of 1925 does not apply to them.

(*q*) See Chap. IV.

(*r*) Sect. 37 (1) (c). Most cases to which this provision extends are already covered by sub-section (b), *supra;* for the purposes named are "charitable purposes," *vide supra,* p. 286; but it is possible that interest, &c., though solely applicable to such repairs, may be in the hands of trustees who are not trustees for charitable purposes *only;* cf. *R.* v. *Special Commrs., Ex parte Rank's Trustees, supra,* p. 288. As to claiming the exemption, *vide supra,* p. 290, note (*h*).

(*s*) Sect. 38, *infra,* p. 418. The first portion of this section relating to tax charged under Sched. A. is of wider scope than the earlier provision contained in sect. 149 of the Act of 1842, as to which see the observations of Lord MACNAGHTEN in *Pemsel's Case,* [1891] A. C. at p. 589. See also Act of 1926, s. 28, proviso, *supra,* p. 290, note (*i*).

other person for their use, they are entitled to the like exemptions as are granted to "charitable institutions" (*t*).

The exemption under Schedule A may be claimed from the General Commissioners; the other exemption only from the Special Commissioners (*u*).

Registered Friendly Societies.

A registered friendly society (*x*), whatever the amount of its income, which is precluded by Act of Parliament or by its own rules from assuring to any person a gross sum exceeding 300*l.*, or an annuity exceeding 52*l.* a year, is entitled to exemption from tax under Schedule A, Schedule C, and Schedule D (*y*). The exemption under Schedule A extends to all lands the property in which belongs to the society, whether occupied by it or not; and that under Schedule D to any profits chargeable under that Schedule, including the profits of any trade carried on by the society (*z*).

The exemption under Schedule A may be claimed from the General Commissioners; those under Schedules C and D only from the Special Commissioners (*a*).

Unregistered Friendly Societies.

An unregistered friendly society whose income does not exceed 160*l.* is entitled to complete exemption from the income tax, under whatever schedule charged (*b*). If its income exceeds that limit, it enjoys no exemption.

(*t*) Sect. 38. The latter part of this section is presumably intended to cover the same ground as sect. 37 (1) (b); if so, it is unfortunate that the language is different.

(*u*) Sect. 40, *infra*, p. 420; see proviso to sub-section (1); and *vide infra*, p. 302.

(*x*) See Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 8 *sqq.*, 41; 1908 (8 Edw. 7, c. 32), ss. 1, 3.

(*y*) Income Tax Act, 1918, s. 39 (1), *infra*, p. 418.

(*z*) The transfer to Sched. D of profits from mines, quarries and other concerns formerly grouped under No. III. of Sched. A, or from the sources included in No. II., is not to affect the right of exemption: Act of 1926, s. 28, proviso; see Chaps. V., VII.

(*a*) Sect. 40; see proviso to sub-sect. (1), *infra*, p. 420; and *vide infra*, p. 302.

(*b*) Sect. 39 (1), *infra*, p. 418; see note (*z*), *supra*.

The exemption may be claimed in the same manner as that of a registered friendly society (*c*).

Savings Banks.

A savings bank which is certified under the Savings Bank Act, 1863 (*d*), is entitled to exemption from tax in respect of its interest and dividends arising from investments with the National Debt Commissioners (*e*). The tax on such interest and dividends is deductible at the source (*f*); where this has been done, repayment may be claimed from the Special Commissioners (*g*).

Apart from the above, every savings bank is entitled to exemption from tax under Schedules C and D, so far as its income is applied in the payment or credit of interest to any depositor (*h*), provided that it makes certain returns before May 1st in the year after that for which exemption is claimed (*i*). The depositor is, however, taxable for interest (of whatever amount) paid or credited to him (*k*). The claim must be made to the Special Commissioners (*l*).

Savings banks are also entitled to a certain relief in respect of expenses of management (*m*).

Trade Unions.

A registered trade union (*n*) which is precluded by Act of Parliament or by its own rules from assuring to any person a gross sum exceeding 300*l.*, or an annuity of 52*l.* a year, is entitled to certain exemptions from tax under Schedules A, C and D. These exemptions extend only to interest and dividends which are in law applicable, and

(*c*) *Supra.*

(*d*) 26 & 27 Vict. c. 87; see sects. 3, 4.

(*e*) Income Tax Act, 1918, s. 39 (3) (a); *infra,* p. 419.

(*f*) *Vide supra,* p. 76.

(*g*) Sect. 40; *vide infra,* p. 302.

(*h*) Sect. 39 (3) (b), *infra,* p. 419; see note (*z*), *supra.*

(*i*) *Ibid.*, proviso (ii), as amended by Act of 1924, s. 24.

(*k*) *Ibid.*, proviso (i); the tax is charged under Case III. of Sched. D, r. 1 (e), *vide supra,* p. 209.

(*l*) Sect. 40; *vide infra,* p. 302.

(*m*) Sect. 33; *vide supra,* p. 213.

(*n*) See Trade Union Acts, 1871 (34 & 35 Vict. c. 31), ss. 13 *sqq.;* 1876 (39 & 40 Vict. c. 22), ss. 6, 8; 1913 (2 & 3 Geo. 5, c. 30), s. 7.

which are in fact applied, solely for the purpose of provident benefits (*o*). The reference to interest or dividends in connection with Schedule A appears to apply to interest on mortgages of lands, &c. (*p*), and to interest or dividends receivable in respect of shares in concerns formerly assessed under No. III. (*q*); income tax in both cases being paid in the first instance by the occupier, or the person carrying on the concern, and charged on the recipient by way of deduction (*q*).

These exemptions can be claimed only from the Special Commissioners (*r*).

There is no exemption for unregistered trade unions.

Industrial and Provident Societies.

A society registered under the Industrial and Provident Societies Act, 1893 (*s*), is entitled to exemption from tax under Schedules C and D, unless it sells to persons who are not members, *and* its shares are limited in number (*t*) either by its rules or by its practice. The exemption extends to the profits of trade, as well as to interest on investments (*u*). The exemption must be claimed from the Special Commissioners (*v*).

There is no exemption for members or employees as such (*x*).

Such a society cannot confer on itself an exemption from tax in respect of lands occupied by it for the purposes of

(*o*) Income Tax Act, 1918, s. 39 (2), *infra*, p. 418; "provident benefits" includes the payments there specified.

(*p*) See Chap. II.

(*q*) The right to exemption is unaffected by the transfer to Sched. D: Act of 1926, s. 28, proviso; see Chap. V.

(*r*) Sect. 40; *vide infra*, p. 302.

(*s*) 56 & 57 Vict. c. 39; see sects. 4—6, 79.

(*t*) The fact that the shareholders are limited to a particular class of persons is immaterial: *Bensted* v. *Society of Midland Dairy Farmers, Ltd.* (1928), 7 A. T. C. 256.

(*u*) Income Tax Act, 1918, s. 39 (4), *infra*, p. 419. The exemption is unaffected by the transfer to Sched. D of profits formerly assessed under No. II. or No. III. of Sched. A: Act of 1926, s. 28, proviso, *infra*, p. 579.

(*v*) Act of 1918, s. 40, *vide infra*, p. 302.

(*x*) Sect. 39 (4).

husbandry only, by electing (*y*) to be assessed under Schedule D instead of Schedule B; if it so elects, it is assessable as under Schedule D in respect of its profits as occupier of those lands (*z*).

Agricultural, &c. Shows.

The profits arising to a society or institution for promoting the interests of agriculture, horticulture, live-stock breeding or forestry from an exhibition or show held for the purposes of the society are exempt, if applied solely to those purposes (*a*).

National Insurance Funds.

In addition to any other rights of exemption that they may possess, the following bodies are entitled to exemption from tax charged under any Schedule in respect of all income derived from the sources mentioned in connection with them (*b*):—

"Approved societies" and their branches under Part I. of the National Insurance Act, 1911 (*c*): the society's funds or credits under that Part and any investment thereof;

The Insurance Commissioners (*d*) (for England, Scotland, Wales and Northern Ireland): any funds held, controlled or managed by them under or for the purposes of that Act;

Insurance Committees established under Part I. of that Act: the Committee's funds or credits under the National Insurance (Health) Acts, 1911—1918;

The trustees of the special fund constituted for the Mercantile Marine under those Acts (*e*): the special fund;

The National Health Insurance Joint Committee: any

(*y*) As to the right of election, *vide supra*, p. 70.

(*z*) *Tranent Co-op. Soc., Ltd.* v. *Brown* (1920), 58 S. L. R. 263; 8 Tax C. 1.

(*a*) Act of 1924, s. 23, passed in consequence of the decision in *Royal Agri. Soc.* v. *Wilson*, *supra*, p. 83.

(*b*) Act of 1918, s. 39 (5), (6), *infra*, p. 419; see note (*t*), *supra*.

(*c*) 1 & 2 Geo. 5, c. 55; see sect. 23.

(*d*) See sects. 57, 80—82.

(*e*) See the sub-section substituted for sub-sect. (6) of sect. 48 of the Act of 1911 by sect. 27 (1) (c) of the Act of 1918 (7 & 8 Geo. 5, c. 62).

funds held, controlled, or managed by them under or for the purpose of those Acts.

These exemptions are to be claimed from the Special Commissioners (*f*).

Unemployment Insurance Schemes.

The body charged with the administration of any special scheme or supplementary scheme under the Unemployment Insurance Act, 1920 (*g*), is exempt from income tax in respect of all income receivable by the body from any source whatsoever for the purposes of the scheme; the exemption is to be claimed from the Special Commissioners (*h*).

Superannuation Funds.

Income derived from investments or deposits of a superannuation fund is exempt from income tax under any Schedule (*i*). In order that the benefit of this concession be obtained, the superannuation fund must be approved by the Commissioners of Inland Revenue (*j*). To secure such approval certain conditions must absolutely be fulfilled, and certain others must be fulfilled unless the Commissioners think fit to dispense with them, upon terms or otherwise. The essential conditions are these:—first, the fund must be *bonâ fide* established under irrevocable trusts (*k*) in connection with some trade or undertaking; secondly, the fund must have for its main purpose the provision of annuities for persons employed in the trade or undertaking on retirement at a specific age or on earlier incapacity; thirdly, the employer must be a contributor; fourthly, the fund must be "recognised by the employer and employed persons in the trade or undertaking." Note the use in these conditions of

(*f*) Income Tax Act, 1918, s. 40, *infra*, p. 302.

(*g*) 10 & 11 Geo. 5, c. 30; see sects. 18, 20.

(*h*) Finance Act, 1921, s. 33, *infra*, p. 545; see p. 302.

(*i*) *Ibid.* sect. 32 (1), *infra*, p. 543.

(*j*) *Ibid.* sect. 32 (3).

(*k*) Difficulties due to the rule against perpetuities may be removed by registration under the Superannuation, &c. Funds (Validation) Act, 1927 (17 & 18 Geo. 5, c. 41), ss. 1, 2.

the word "undertaking," which is presumably introduced so as to include employers of all kinds, and not merely those the profits of whose trades or businesses are assessable under Schedule D.

The conditions upon which the Commissioners may insist or not, at their discretion, are these:—first, that the rules of the fund shall not provide for the return of contributions in any contingency; secondly, that the provision of annuities of the class described shall be the sole purpose of the fund, so long as it is the main purpose—the Commissioners would appear, for instance, to have a discretion to approve funds which receive, in addition to contributions for securing benefits on retirement, purely voluntary contributions intended to secure benefits after death; thirdly, that the trade or undertaking is carried on wholly in the United Kingdom, provided that it is carried on partly in this country; and fourthly, that the person who carries it on is residing in the United Kingdom (*l*). Where the Commissioners decide to approve the fund in spite of the absence of any of these conditions, they may attach to their approval such conditions as they think fit. If all the conditions which are above described both as being essential and as capable of being waived by the Commissioners, are shown to their satisfaction to have been fulfilled, it would not appear that they have any power to withhold approval of the fund (*m*). Applications for approval are to be made before the end of the year of assessment to which they relate; any alteration in the rules, &c. must be notified; and upon failure to do so, or where the fund ceases to satisfy the above requirements, the approval may be withdrawn (*n*). Trustees or managers of a superannuation fund, and employers who

(*l*) "and" in the last line of sub-sect. (3), proviso (iii), must mean "or"; it cannot have been intended, when the concession may be enjoyed by a trade, &c. so carried on by a person residing elsewhere, to exclude from it a trade, &c. carried on only partly in the United Kingdom by a person residing here, or a trade, &c. carried on wholly in the United Kingdom by a person residing elsewhere.

(*m*) This observation is rendered necessary by the peculiar negative form in which the substantive part of sub-sect. (3) is cast.

(*n*) Regulations made under sect. 32 of the Act of 1921, reg. 1—3, *infra*, p. 621.

contribute, and whose employees contribute, must when required furnish certain returns and accounts (*o*).

The exemption is to be claimed by the trustees in the same manner as an "allowance or deduction" is claimed, and proof is to be given in the same way (*p*). In the settlement the revenue authorities may set off any tax for which the trustees are required to account in respect of returned contributions or of lump sums paid in lieu of annuities (*q*).

Claims for Exemption before Special Commissioners.

Where application for exemption has to be made to the Special Commissioners (*r*), it must be made in writing in the prescribed form (*s*) and verified by an affidavit, made by the treasurer, trustee or any duly authorised agent of the claimant body before a general or additional commissioner for the division in which that person resides (*t*).

The Special Commissioners on proof of the facts to their satisfaction shall allow the claim and issue an order for repayment (*u*). No appeal is provided in this case, but if the Special Commissioners fail upon due proof to allow the claim, or to issue such an order, mandamus will lie to compel them to do so (*x*). The Court has power to order the Special Commissioners to pay costs (*y*).

Special penalties are attached to the making of false or fraudulent claims for exemption under sects. 37—39 in respect of tax chargeable under Schedule C (*z*).

(*o*) Reg. 10; see also sect. 32 (4) (b).

(*p*) Reg. 12; *vide infra*, p. 353.

(*q*) See regs. 8, 13.

(*r*) As indicated *supra*, pp. 296 *sqq*. Claims under sect. 37 of the Act of 1918, and sect. 30 of the Act of 1921, are no longer so made; but an appeal may be brought to the Special Commissioners: Act of 1925, s. 19; see pp. 289, 292.

(*s*) Act of 1918, s. 40 (1), *infra*, p. 420.

(*t*) Sect. 40 (2).

(*u*) Sect. 40 (1), (3).

(*x*) *Special Commrs.* v. *Pemsel*, [1891] A. C. 531, *supra*, p. 286; the Lords were unanimous on this question, which is dealt with by Lord HALSBURY, L.C., at p. 539, and by Lord HERSCHELL at p. 569. The same procedure was applied in *R.* v. *Special Commrs., Ex parte University College of North Wales*, and *Ex parte Essex Hall, supra*, pp. 285, 289. See also Chap. XVII.

(*y*) *R.* v. *Special Commrs., Ex parte Dr. Barnardo's Homes*, [1920] 1 K. B. 26, where the nature of the remedy was considered; the judgment was reversed on the merits, *vide supra*, p. 288, but that does not affect the decision on this point.

(*z*) Sect. 40 (4), *infra*, p. 420; as to penalties generally, see Chap. XV.

A claim for repayment must be made within six years next after the year of assessment to which it relates (*a*).

Local Authorities' Sewers.

Local authorities are exempted from income tax in respect of sewers maintained by them in pursuance of their statutory duties in relation to the public health (*b*), with regard to their assessment both under Schedule A (*c*) and Schedule B (*d*); but the exemption does not extend to works for the disposal, purification or treatment of sewage (*e*). The expression "local authority" is specially defined for this purpose, and includes not only ordinary urban and rural authorities, but such bodies as main or joint sewerage boards, and any other public body having power under any enactment relating to the public health to construct and maintain sewers (*f*). The exemption applies, although the authority in which the sewer is vested obtains a profit by allowing another authority to use it.

There is, however, one exception to this exemption. It is not to "extend to any rent payable or other annual payment to be made by the local authority in respect of the sewer" (*g*). This proviso is silent on the question whether the local authority is to be assessed on the amount of such rent or payment and deduct tax against the same in paying it (*h*), or whether the recipient of the rent or payment is to be directly assessed. As income tax is not to be charged in respect of the sewer, it is possibly intended that the latter

(*a*) Sect. 41, as amended by sect. 30 (1) of the Act of 1923, *infra*, p. 420.

(*b*) Finance Act, 1921, s. 34, *infra*, p. 545; the decision in *Ystradyfodwg Main Sewerage Board* v. *Bensted*, [1907] A. C. 264, is thus no longer applicable to public health sewers; but the principles underlying it are still good law.

(*c*) See Chap. II., p. 38.

(*d*) See Chap. III., p. 65.

(*e*) *Summers* v. *Renfrewshire C. C.*, [1925] S. C. 118.

(*f*) Act of 1921, s. 34 (2); the definition excludes such bodies as Commissioners of Sewers and Drainage Boards, whose statutory powers do not relate to the public health.

(*g*) Act of 1921, s. 34 (1), proviso; cf. s. 30 (2), *supra*, p. 288.

(*h*) See pp. 186—188, *supra*; as there is to be no assessment under Sched. A, the provisions of that Schedule as to deduction of tax against a rent or other annual payment, dealt with at pp. 55 *sqq.*, cannot apply.

of these methods should be adopted, with the aid, perhaps, of the "sweeping words" of Schedule D and Case VI. of that Schedule (*i*); but if this is what was intended, it might well have been expressed.

Funds for Reduction of the National Debt.

Trusts for the above purpose are made valid by an Act of 1927, and the income arising from the original or accumulated funds of a trust which is so rendered valid, and any other profits which are liable to be accumulated under the trust, are exempt from income tax (*j*).

Exemptions conferred by Local Acts.

In the 18th and the earlier part of the 19th centuries it was not unusual for a local Act authorising an undertaking which was esteemed to be of public benefit to contain a provision exempting that undertaking or its promoters from rates and taxes. Such enactments were formerly thought to apply only to rates and taxes in existence at the date of the Act, or substituted for what were then in existence; but it is now clear that they apply also to future rates and taxes unless there are words which show that such was not the intention of Parliament (*k*). It falls to be decided, however, upon the language of each enactment whether it was intended to apply, not only to local rates, but to national taxes such as the income tax. If the Act shows that the undertaking was considered to be of national and not merely of local importance, the exempting clause will, if the language allows it, be construed in the wider sense (*l*). And if that enactment clearly intends that the Crown is to be affected, the Crown need not be expressly named (*m*).

(*i*) See Chap. IX.

(*j*) Superannuation and other Trust Funds (Validation) Act, 1927 (17 & 18 Geo. 5, c. 41), s. 9; Finance Act, 1928, s. 30 (1), *infra*, p. 613.

(*k*) *Associated Newspapers, Ltd.* v. *City of London Corporation*, [1916] 2 A. C. 429.

(*l*) *Pole-Carew* v. *Craddock*, [1920] 3 K. B. 109.

(*m*) *Stewart* v. *Thames Conservators*, [1908] 1 K. B. 893; the tax was claimed under Sched. A, No. I., *supra*, p. 32, and Sched. B, *supra*, p. 64.

Accordingly (*m*), where a local Act of the Thames Conservators provided that lands and buildings vested in them in respect of the Thames shall be "exempt from all parliamentary rates, taxes, and assessments and impositions whatsoever" (in addition to an exemption from parochial rates and taxes), the Conservators were held not to be liable to income tax in respect of such land and buildings (*n*). The proprietors of a ferry forming an important link between Devon and Cornwall, and set up under a local Act which provided that they "shall not be rated or assessed for . . . any tax, rate or assessment whatsoever, parliamentary or parochial, for or in respect of the said ferry," were also held to be exempt (*o*).

By sect. 213, no statute which grants any salary, annuity or pension free of tax is to be taken to exempt any person from tax; whatever this means, it has no effect with regard to any such statute passed after the Income Tax Act, 1842 (*p*).

(*m*) See note (*m*), previous page.

(*n*) See note (*k*), previous page.

(*o*) *Pole-Carew* v. *Craddock, supra;* the tax was claimed under Sched. A, No. III., now transferred to Sched. D, *supra,* p. 290.

(*p*) *Argyll* (*Duke*) v. *I. R.* (1913), 109 L. T. 893; *In re Shrewsbury Estate Acts,* [1924] 1 Ch. 315. These decisions were given upon sect. 187 of the Act of 1842; but the repeal and re-enactment of that section by the Act of 1918 can scarcely affect them.

CHAPTER XIII.

TOTAL INCOME.

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For What Purposes Total Income is Ascertained.

In the preceding Chapters, income (as the word is understood in the Income Tax Acts) has been considered according to the various sources from which it is derived, that is, according as it is income from property in land (including tithe rentcharge) (*a*), from the occupation of land (*b*), from interest, &c. payable out of public revenues (*c*), from a trade or profession carried on in the United Kingdom (*d*), from ordinary interest, annuities, discounts and other annual payments (*e*), from foreign securities and other foreign possessions (*f*), from offices and employments (*g*), or from miscellaneous sources (*h*). Income of all those kinds is chargeable with income tax proper (whether by direct assessment or by deduction at the source), and it is immaterial for that purpose whether it is received by an individual, or by a company or other body of persons.

(*a*) Sched. A: see Chap. II.
(*b*) Sched. B: see Chap. III.
(*c*) Sched. C: see Chap. IV.
(*d*) Sched. D, Cases I. and II.: see Chaps. V. and VI.
(*e*) Sched. D, Case III.: see Chap. VII.
(*f*) Sched. D, Cases IV. and V.: see Chap. VIII.
(*g*) Sched. E: see Chap. X.
(*h*) Sched. D, Case VI.: see Chap. IX.

But there are certain purposes within the operation of the Income Tax Acts for which it is necessary to ascertain the total income of an individual from all of the above sources that may be possessed by him. First, the right to the various reliefs (*i*), by way of personal allowance, in respect of dependents other than wives, in respect of earned income, and in respect of the income of a person of sixty-five, and their amount, depends largely on the total income of the individual who claims the relief (*j*), and the relief in respect of life insurance premiums and similar payments is limited to the amount of tax on one-sixth of the total income from all sources of the claimant (who can only be an individual) (*k*). Secondly, the sur-tax is levied "in the case of an individual whose total income from all sources exceeds a stated amount" . . . . in respect of the excess of his total income over that amount (*l*).

The income tax provisions applicable to the ascertainment of total income for the purposes of reliefs are applicable to the sur-tax also, and these are considered in the present Chapter. But there are certain further provisions applicable to total income for purposes of sur-tax only (*m*), which may be reserved for the next Chapter, where the sur-tax is dealt with.

The returns of total income that may be required by the authorities are indicated in Chapter XV., together with claims for relief.

"*Total Income.*"

The enactment last cited (*m*) affords little or no guidance as to how the "total income" of an individual "from all

(*i*) Chap. I., *supra*, pp. 11 *sqq*.

(*j*) Act of 1920, s. 17; Act of 1925, s. 15, *infra*, pp. 529, 571; see also Act of 1927, s. 40, *infra*, p. 599. In the case of non-resident British subjects, income not chargeable with British income tax is included for the purpose of calculating such relief as is due to them: Act of 1920, s. 24 (1), proviso, *supra*, p. 13.

(*k*) Act of 1918, s. 32 (3) (a), *infra*, p. 413.

(*l*) Act of 1927, s. 38 (1), *infra*, p. 598.

(*m*) The above appears to be the effect of sect. 38 (2), though it is couched in the form of a definition.

sources" is to be estimated or made up; nor is this expressly laid down elsewhere in the Income Tax Acts. But the Acts provide what information is to be given in claims for relief (*o*), and in "Declarations and Statements of Total Income" (*p*); and the prevailing practice, which has the sanction of the Courts (*q*), is based upon this. The following passage affords a connected account of the statutory enactments and of the practice:—

"Section [27 of the Income Tax Act, 1918] then provides for the mode of claiming [any allowance or deduction]. The claimant is to deliver in the [prescribed form (which refers to sect. 207 and Fifth Schedule, No. XVII.)] a declaration setting forth the sources of his income and the receipts from each source, 'and also (1) [all particulars of any yearly] interest or other annual payments, reserved or charged thereon, whereby [his] income [is] or may be diminished'; and also (2) [all particulars of sums which he has charged or] may be entitled to charge [on account of tax] against any other person; or (3) [which he has deducted, or may be entitled to deduct, out of any payment to which he is or may be liable]. Heads (2) and (3) refer to the amounts of tax which under [sect. 17] he cannot recover because he can deduct it from another person. The reason for head (1) is not expressly stated, but I think it must mean the provision of means of calculating deductions from income to obtain [any allowance or deduction] and must involve an authority to deduct those sums from the total income to get the income for the purpose of [any allowance or deduction]. . . . When one seeks further light from the 'form' prescribed in [sect. 207; Fifth Schedule, No. XVII.] the first and second heads give the total amount of income

(*o*) Act of 1918, s. 27 (1), *infra*, p. 411; as to the procedure, *vide infra*, pp. 353, 354.

(*p*) This is the heading given to No. XVII. in the 5th Sched. to the Act of 1918 by Part III. of the 5th Sched. to the Act of 1927, *vide infra*, pp. 347, 353. See also Act of 1918, s. 207, *infra*, p. 464.

(*q*) *Earl Howe* v. *Inland Revenue*, [1919] 2 K. B. 336, see per SCRUTTON, L.J., at pp. 351, 352. The case arose under the Act of 1842; but the passage quoted is equally applicable to the enactments now in force, and the writer has ventured to insert in it references to and quotations from the Acts in their current form.

for which the claimant is either (1) assessed or (2) has to allow deduction of duty by others who are assessed; (3) is the amounts he can deduct from the total of (1) and (2); (4) gives the sum arrived at by deducting head (3) from the heads (1) and (2). Head (5) is apparently to inform the revenue as to other persons who have income from which tax is deducted at the source."

Total income may therefore be defined as the sum (*r*) of the amounts for which the individual is assessed, and for which he has to allow deduction of tax by others who are assessed or who have themselves to allow such a deduction, *less* the amount of any interest, annuities or other annual payments which are to be paid out of the property or profits or gains assessed on the individual, and upon which the individual can deduct the tax against the recipient (*s*). Life assurance premiums, for instance, cannot be deducted.

"What is the meaning of the expression 'total income from all sources'? It certainly means more than income properly so described—it includes more than 'profits and gains' chargeable under the last three schedules of charge. It includes the annual value of property chargeable under Schedule A, and the annual value of the occupation chargeable under Schedule B. The Income Tax Code (*t*) . . . . contains express directions for estimating and calculating these values for the purpose of ascertaining the title to abatement when relief by way of abatement is claimed. But it contains no directions for estimating or bringing into account any benefit or advantage or enjoyment derived from lands . . . . which does not come under Schedule A or Schedule B" (*u*).

It is thus immaterial whether the amounts in question (charged directly or by way of deduction) are assessable under Schedule A, B, C, D or E, so long as they are

(*r*) See 5th Sched. No. XVII. 4th Head.

(*s*) *Earl Howe* v. *I. R., supra.* Cf. also *R.* v. *Latchingdon Overseers,* [1922] 2 K. B. 14; and see "Sums paid over to other Persons," *infra,* p. 318.

(*t*) See now Act of 1918, s. 19, *infra,* p. 409.

(*u*) *Tennant* v. *Smith,* [1892] A. C. 150, per Lord MACNAGHTEN at p. 161.

assessable under one or the other (*x*); the whole of the income charged under any one of them is to be brought into the calculation, subject to any deduction that may be applicable as above indicated.

An assessment that has become final and conclusive for the purposes of tax cannot be reopened for the purpose of estimating total income; and it is provided generally that no allowance or adjustment can be made for this purpose on the ground of diminution of income or loss; such an allowance or adjustment can only be made in total income, if it has previously been made on an application with regard to tax in respect of the particular source of income concerned (*y*). But there is a special provision for adjustment of total income in respect of prior losses, where a business has been sold to a company (*z*).

Income from Property in, or Occupation of, Lands.

In the calculation of total income, the income of the owner of any land is represented by the annual value estimated under Schedule A (as reduced by the various deductions for repairs and losses allowed under that Schedule) (*a*), or by the rent which he actually receives, if that is lower than the annual value as so reduced. But if that annual value as reduced is higher than the rent paid by a tenant, the difference between the two sums forms part of the total income of the tenant (*b*), for the amount of the difference represents the value for the year of the property which the tenant has in the land while the tenancy continues (*c*). Income from the occupation of lands is represented by the

(*x*) Act of 1918, s. 1, *infra*, p. 407.

(*y*) Sect. 18, *infra*, p. 408; Act of 1927, s. 42 (4), *infra*, p. 601; as to claims for adjustments, see pp. 338, 339, 389, *infra*.

(*z*) Act of 1927, s. 29, *infra*, p. 592; as to business loss, *vide supra*, pp. 170—173.

(*a*) See Chap. II. These deductions are considered on pp. 42—45, *supra*. The repeal of sect. 5 (3) (a) of the Act of 1918 by sect. 47 (3) of the Act of 1927 does not appear to alter the position as to these deductions, the rules of No. V. of Sched. A (among others) being applied to the sur-tax by sect. 38 of the latter Act.

(*b*) *I. R.* v. *Fargus* (1926), 10 Tax C. 665.

(*c*) Cf. *Mansfield* v. *Relf*, [1908] 1 K. B. 71, and the cases there cited; *Salaman* v. *Holford*, [1909] 2 Ch. 602, does not affect this point.

"assessable value" on which tax is levied under Schedule B, as reduced by deductions for losses, &c. (*d*). An owner-occupier of land who is assessed under both Schedules A and B has to bring in the amounts of both assessments (*e*). An individual who is a coparcener, a joint tenant, or a tenant in common, of the profits of any property brings in to his total income such part of the amount assessed as is proportionate to his share and interest; so also does an individual who is a tenant of lands or tenements in partnership, where the partners are in actual joint occupation and are entitled to the profits in shares (*f*).

The privilege accorded to a bank manager of living in a dwelling-house (in which he is obliged to live) attached to the bank is not convertible into money or money's worth, and is not assessable under any schedule; the value of that privilege therefore does not form part of his total income (*g*); neither does the annual value of a manse occupied by a minister of the Free Church of Scotland who is bound to occupy it personally form part of his total income (*h*); but the case of a minister of the Established Church of Scotland is different, because he can let his manse, and convert into money the value of his privilege of residing there (*i*).

It has been held in Scotland that where a person was allowed by the trustees of a settlement, in the exercise of their discretion, to reside in a mansion-house and enjoy certain lands, the annual value (assessed under Schedule A or Schedule B) did not form part of his total income (*k*); in England, that a person in a somewhat similar position must

(*d*) See Chap. III.; and cf. the preceding note.

(*e*) Sect. 19, *infra*, p. 409.

(*f*) Sect. 20: see proviso (i) thereto, *infra*, p. 409. No such apportionment is possible unless there is a real partnership as well as a joint occupation of land; see *McKie* v. *Luck*, and the other cases cited *supra*, p. 12, notes (*p*), (*q*).

(*g*) *Tennant* v. *Smith*, [1892] A. C. 150, *supra*, p. 309.

(*h*) *M'Dougall* v. *Sutherland* (1894), 21 R. 753; 3 Tax C. 261, *supra*, p. 25; cf. *I. R.* v. *Wemyss*, [1924] S. C. 284; 8 Tax C. 551, *infra*.

(*i*) *Corke* v. *Fry* (1895), 22 R. 422; 3 Tax C. 335, *supra*, p. 251.

(*k*) *I. R.* v. *Wemyss*, [1924] S. C. 284; 8 Tax C. 551, *infra*, p. 325.

include the annual value of the house assessed under Schedule A in his total income (*l*). Again, in Scotland, it has been held that where the beneficiary was entitled to reside in a house and enjoy the lands, and the trustees had no discretion to prevent her, the annual value formed no part of her total income, whether assessed under Schedule A or Schedule B (*m*); in England, the Court of Appeal have taken the contrary view, and have held that where there was more than one beneficiary so entitled, and in fact resident in the mansion, the annual value of the house (assessed under Schedule A) must be apportioned to each of them, and the appropriate part included in her total income (*n*). In three cases under different dispositions, the Court of Session has dealt with the outgoings (repairs, rates, &c.) connected with the mansion-house and lands, or of a landed estate, which were directed to be paid by the trustees and not by the beneficiary who resided in the house and enjoyed the lands, or received the net income derived therefrom; in one case, the amount of the outgoings (with the addition of income tax thereon) was held to form part of the total income of the beneficiary (*o*); in the others, it was held not to do so (*p*).

A person entitled under a will to a life-rent from an estate is not bound to include that life-rent in her total income, where the executors and trustees have elected to pay estate duty by instalments, and have in the meanwhile kept the estate in their own hands, paying to the beneficiary such income as was available in each year; only the amount thus receivable by her forms part of her total income (*q*). Again, where a person was entitled under a will to a share of an estate, but the executors applied the surplus income to reduce the mortgage debts, and meanwhile kept the estate

(*l*) *Tollemache* v. *I. R.* (1926), 136 L. T. 444.

(*m*) *Lady Miller* v. *I. R.*, [1928] S. C. 819.

(*n*) *Shanks* v. *I. R.*, [1929] 1 K. B. 342.

(*o*) *Donaldson's Exors.* v. *I. R.* (1927), 13 Tax C. 461; see also *Murray* v. *I. R.*, *infra*, p. 317, note (*r*), and the English decision to a similar effect in *Sutton* v. *I. R.* (1929), 45 T. L. R. 565.

(*p*) *Lord Hamilton of Dalzell* v. *I. R.* (1926), 10 Tax C. 406; *Lady Miller* v. *I. R.*, *supra*.

(*q*) *de Robeck* v. *I. R.*, [1928] S. L. T. 222; 13 Tax C. 345 (H. L.).

in their own hands without dividing the residue, no part of the income from the estate was included in that person's total income (*r*).

Profits of Trade or Profession.

The profits of a trade cannot be included in an individual's total income unless the trade is wholly or partly the property of that individual (*s*). Where the trade or profession is carried on by a partnership, the total income of each partner for any year includes the share of the partnership profits to which he is entitled for that year (*t*); the proportion is that fixed for the year by the agreement of partnership, &c.; but the profits to which that proportion is applied are those ascertained for income tax purposes, it may be of the preceding year or of the actual year (*u*).

Where an individual (or a partnership) has sold his business to a company during a year, the total income of the individual (or of any of the partners) for that year includes a portion of the profits of the business for that year, apportioned to the date of sale; it is immaterial that under the contract of sale the company receives the profits as from an earlier date (*x*).

Dividends: Bonus Shares: Sums distributed in Winding-up.

A company or other body of persons is charged to income tax on its profits, and deducts the tax against its shareholders in distributing a dividend to them (*y*), the deduction being calculated at the standard rate of income tax

(*r*) *Daw* v. *I. R.* (1928), 7 A. T. C. 238.

(*s*) *Walker* v. *Reith* (1906), 8 F. 381, *supra*, p. 250.

(*t*) Act of 1918, s. 20, proviso (ii); a French "société en nom collectif" is not a partnership for this purpose: *Dreyfus* v. *I. R.* (1929), Rating and Income Tax Newsp., June 22.

(*u*) *Gaunt* v. *I. R.*, [1913] 3 K. B. 395; see, however, *Lassen* v. *I. R.* (1928), 138 L. T. 463. As to estimation of trade profits, *vide supra*, pp. 115 *sqq.*

(*x*) *Bartlett* v. *I. R.*, [1914] 3 K. B. 686; *I. R.* v. *Roberts* (1925), 41 T. L. R. 623; cf. *Adams* v. *Morgan, Ltd.*, [1924] 1 K. B. 751. An adjustment in respect of earlier losses may be claimed: *supra*, p. 172. As to the amount to be included in respect of dividends from shares in the company, see below.

(*y*) General Rules, r. 20, *vide supra*, p. 264. A peculiar case where shares in a "one-man" company were sold *ex div.* will be found in *I. R.* v. *Sanderson* (1921), 8 Tax C. 38; see also *Sanderson* v. *I. R.* (1924), 9 Tax C. 80.

for the year in which the payment becomes due (*z*). The dividend so received forms part of the total income of the recipient in that year, although it represents or includes a distribution of profits earned before that year (*a*). In calculating the recipient's income, the sum actually received must be increased by the inclusion of tax at the standard rate, even though the dividend purports to have been paid free of income tax (*b*). Where shares are bought with the right to receive a forthcoming dividend, the dividend forms part of the purchaser's income, not of the vendor's (*c*); the increase in the price cannot be set off against the dividend (*d*). Where shares are bequeathed as a specific legacy, to which the executors have given a delayed assent, the dividends payable after the date of the testator's death nevertheless form part of the legatee's total income for the years in which they became payable (*e*).

The case of a bonus allotment of shares in the company which allots them differs from that of a distribution of dividend, although the allotment is made in respect of profits earned by the company. Here, the shareholder does not receive the face value of the shares allotted to him, nor is he to be considered in law to have received that or any other sum of money; the transaction is in substance not a payment of income but an increase of capital; the shares thus allotted to any individual did not, therefore, form part of his total income for purposes of super-tax (*f*). In the case just cited,

(*z*) Act of 1927, s. 39 (1), *infra*, p. 599.

(*a*) Sect. 39 (2); *Hurll* v. *I. R.* (1922), 8 Tax C. 292; *Duncan* v. *I. R.*, [1923] S. C. 388; 8 Tax C. 433. Cf. *Leigh* v. *I. R.*, [1928] 1 K. B. 73, *infra*, p. 317. Provision is made for relief as regards sur-tax in cases where the dividend represents income of more than a year: Act of 1927, s. 34, *vide infra*, p. 339.

(*b*) *Samuel* v. *I. R.*, [1918] 2 K. B. 553; see also *A.-G.* v. *Ashton Gas Co.*, *supra*, p. 264; see also Act of 1927, s. 39 (1) and (2), *supra*. In other words, the income from the shares is represented by the gross amount, which, after deduction of tax at the standard rate, leaves the amount received.

(*c*) *I. R.* v. *Oakley*, [1926] 1 K. B. 131; see, however, pp. 336—338, *infra*.

(*d*) *I. R.* v. *Forrest*, [1924] S. C. 450; 8 Tax C. 704.

(*e*) *I. R.* v. *Hawley*, [1928] 1 K. B. 578.

(*f*) *I. R.* v. *Blott*, [1920] 2 K. B. 657; [1921] 2 A. C. 171, *supra*, p. 126. This decision followed that in *Bouch* v. *Sproule* (1887), 12 A. C. 385, which arose between tenant for life and remainderman. In a recent case, *Bouch* v. *Sproule* was distinguished, and it was held that a distribution in cash (not shares) of money

there was no option to take payment in cash; but the same rule applies where, although such an option has been formally given, the substance of the transaction is that the undivided profits are to be converted into paid-up capital, and the shares are in fact accepted (*g*).

And a similar result follows where the distribution to the shareholders is made (without any option to receive the bonus in cash) as an issue of debenture stock, redeemable on notice by the company or so soon as the security becomes enforceable (*h*), or of debentures, redeemable on notice by the company or the holder, and in fact paid off a few weeks after the distribution (*i*). "The substance of the transaction is to convert undivided profits available at once for dividend . . . into capital assets of the company with a specific charge on them . . . not exerciseable at the will of the shareholder, but only payable in future events depending on the company. . . . Nothing was received by the shareholder except the acknowledgment of a debt" (*k*). Undivided profits, however, purporting to be distributed, but placed to a loan account on the condition (*inter alia*) that the amount credited to each shareholder shall be repayable on six months' notice by the shareholder, are part of the shareholder's income (*l*). Nor is a dividend any the less income because distributed on the understanding that it shall be used by the shareholders for the purchase of further shares

received by a company from the sale of its capital assets must be treated as income of the tenant for life: *In re Bates,* [1928] Ch. 682.

(*g*) *I. R.* v. *Wright,* [1927] 1 K. B. 333 (C. A.); and see per Lord FINLAY, [1921] 2 A. C. at p. 198. In *I. R.* v. *Coke,* [1926] 2 K. B. 246, which arose out of the same transaction of the company as *I. R.* v. *Wright,* but where the option was exercised as to the greater part of the shares, ROWLATT, J., held that the cash received and the shares accepted formed part of the total income; no appeal was brought, but as to the shares the decision was, in effect, reversed in *I. R.* v. *Coke,* and the judgments in C. A. make its correctness doubtful as regards the cash.

(*h*) *I. R.* v. *Fisher's Exors.*, [1926] A. C. 395.

(*i*) *Whitmore* v. *I. R.* (1925), 10 Tax C. 645. Loans to a controlling shareholder in a company may not be a part of his total income: *I. R.* v. *Sansom,* [1921] 2 K. B. 492.

(*k*) *I. R.* v. *Fisher's Exors.*, per SCRUTTON, L.J., [1925] 1 K. B. at pp. 469, 472.

(*l*) *I. R.* v. *Doncaster* (1924), 8 Tax C. 633; the subsequent decision in the case last cited seems to leave this decision untouched.

in the company (*m*). And where a company distributes to its shareholders, by way of bonus, shares held by it in another company, the sum realized by the allottee for the sale of those shares is chargeable with income tax (*n*), and is, therefore, to be included in total income.

Where a company possessing a balance of undistributed profits is wound up, and that balance is divided among the shareholders, each shareholder receives his portion as his share of the company's surplus assets, and it does not form part of his total income (*o*). On an amalgamation, however, where shares in one of the original companies are sold to the new company in consideration of shares in the latter, but profits made by the old company to the date of amalgamation are distributed to its shareholders, those profits do not form part of the purchase price of the shares, but are to be included in the total income of the recipients (*p*). If a business is sold to a company during a year, and the dividends paid on shares received by the vendor include profits made up to the date of sale, such part as is paid out of those profits must be deducted from the dividend in arriving at the vendor's total income for that year (*pp*).

The provisions for levying sur-tax in respect of the income of a company which has not distributed a reasonable part thereof so as to include the amounts distributed in the total income of the members are considered in the following Chapter (*q*).

Interest: Various Annual Payments.

Where under a will a share of the income from investments is payable to a beneficiary, the trustees paying the expenses of management, the trust may be such that the

(*m*) *Roe* v. *I. R.* (1924), 131 L. T. 255; 8 Tax C. 613; cf. *Parker* v. *Chapman* (1928), 138 L. T. 729, *supra*, p. 254.

(*n*) *Pool* v. *Guardian Investment Trust Co., Ltd.*, [1922] 1 K. B. 347, *supra*, p. 126; see per Lord Cave, L.C., in *I. R.* v. *Fisher's Exors.*, [1926] A. C. at p. 402.

(*o*) *I. R.* v. *Burrell*, [1924] 2 K. B. 52; see, however, Act of 1927, s. 31 (4)—(6), *infra*, p. 334.

(*p*) *I. R.* v. *Roberts* (1927), 13 Tax C. 277.

(*pp*) *I. R.* v. *Roberts* (1925), 41 T. L. R. 622, *supra*, p. 313.

(*q*) Act of 1922, s. 21; Act of 1927, ss. 31, 32; see pp. 326 *sqq.*, *infra*.

total income of the beneficiary includes only her share of the net income after those expenses have been deducted (*r*).

Interest on War Loan securities issued free of income tax (but not free of the super-tax) is to be brought in to total income, together with the tax on such interest at the standard rate (*s*).

If arrears of interest that have accumulated over several years are paid in one sum, that sum forms part of the total income of the year in which the payment is received (*t*).

Annual payments based on a percentage of gross receipts from sales of patent machines and made under deduction of tax are included in the total income of the payee, although paid in part consideration for the transfer of patent rights (*u*). So is an annual payment to the trustees of a deceased partner in respect of the firm's name and goodwill (*x*).

Wounds and disability pensions and war gratuities (*y*), and allowances to war widows in respect of children (*z*), are exempt from tax, and are not to be reckoned in computing total income.

Weekly Wage-earners.

Weekly wage-earners employed by way of manual labour are in respect of the wages arising from that employment assessed half-yearly on the actual amount of wages in that half-year (*b*); their total income in respect of such wages is

(*r*) *Murray* v. *I. R.*, [1926] S. L. T. 714; 11 Tax C. 133; *Macfarlane* v. *I. R.*, [1929] S. L. T. 395; see also the decisions as to income in relation to landed estates, *supra*, p. 312.

(*s*) Act of 1918, s. 48 (2), as amended by Act of 1927, 5th Sched. Part III. This provision is somewhat mitigated as regards converted Government securities by Finance Act, 1919, s. 25, and Finance Act, 1920, s. 30, *infra*, pp. 527, 538.

(*t*) *Leigh* v. *I. R.*, [1928] 1 K. B. 73; the interest was payable on mortgage bonds to bearer. As to relief with regard to super-tax in such cases, see Act of 1927, s. 34, *infra*, p. 339.

(*u*) *Jones* v. *I. R.*, [1920] 1 K. B. 711; it was conceded that instalments of a lump sum which also formed part of the consideration were not income; but see *Constantinesco* v. *I. R.*; *Mills* v. *Jones*, *supra*, p. 206.

(*x*) *Mackintosh* v. *I. R.*, *supra*, p. 193.

(*y*) Act of 1919, s. 16 (1), s. 17 (1), *infra*, p. 525.

(*z*) Act of 1922, s. 27, *infra*, p. 566.

(*b*) *Vide supra*, p. 255.

represented by the total wages on which the tax is thus charged in the year (*c*).

Sums paid over to other persons: Life Assurance Premiums.

As already stated (*d*), any annual payments made to others under such conditions that the payer is entitled to deduct tax in making the payments (*e*) are to be excluded from the total income of the payer; "yearly interest" is thus deductible (*f*); and the annual payment made to a wife under an agreement of separation (*g*). For the purpose of calculating the total income, such payments (together, of course, with the income tax deducted) are deducted in the year in which they are payable, notwithstanding that they may have, in whole or in part, accrued due before that year (*h*). The annual payments are to be deducted, even if they are not actually paid over to other persons but are set aside and credited to a fund which stands in the name of the payers, and in which other persons have an interest as well (*i*).

On the other hand, the relief given in respect of life insurance premiums for the purposes of income tax does not operate to diminish the total income on which sur-tax is payable (*k*). And premiums payable under covenant in order to keep up policies assigned as securities for advances cannot be deducted in arriving at total income. These are not annual payments in respect of which tax can be de-

(*c*) Act of 1918, s. 22, *infra*, p. 409. (*d*) *Supra*, p. 309.

(*e*) *Vide supra*, pp. 59, 182.

(*f*) *I. R.* v. *Hay* (1924), S. L. T. 470; 8 Tax C. 630; contrast *I. R.* v. *Paterson* (1924), 9 Tax C. 163; *I. R.* v. *Parsons* (1928), 44 T. L. R. 420; *Perkins' Exor.* v. *I. R.* (1928), 13 Tax C. 851, *infra*, p. 325.

(*g*) *Eadie* v. *I. R.*, [1924] 2 K. B. 198, *infra*, p. 341.

(*h*) Act of 1927, s. 39 (2), *infra*, p. 599; contrast *I. R.* v. *Hawley*, [1928] 1 K. B. 578, *supra*, p. 314. And as to the date from which a restricted annuity is deductible, see *I. R.* v. *Haddington* (*Earl*), [1924] S. C. 456.

(*i*) *Stocker* v. *I. R.*, [1919] 2 K. B. 702; the case arose under a somewhat peculiar arrangement for carrying on a business devised by will.

(*k*) Because that relief is given by way of a reduction of the amount of tax payable, sect. 32 (1), *infra*, p. 413, as other reliefs are now given, Act of 1927, s. 40, *infra*, p. 599. The remark in the text does not apply to the various kinds of superannuation contributions which are deductible before arriving at the income chargeable, *vide supra*, pp. 142, 252.

ducted against the payee; this amount is therefore part of the income of the payer and not of the payee (*l*).

Lunacy percentage cannot be deducted in arriving at the total income of a lunatic on whose estate it is charged (*m*).

Dispositions purporting to Transfer Income.

By virtue of provisions for the purpose in the Finance Act, 1922 (*n*), income which any person has (by any of the dispositions (*o*) there described) made over temporarily to a child or to some other person is still deemed for income tax and sur-tax purposes to form part of the income, and of the total income, of the person who thus disposed of it. These provisions cover three different classes of cases, a different date regulating the application to each class. These are, stated shortly, (a) cases where the person who, directly or indirectly, made the disposition can, by the exercise of a power, obtain the beneficial enjoyment of the income for himself or herself without the consent of any other person but his wife or her husband (if they are living together); (b) cases where the disposition is a voluntary one and makes the income applicable for some person other than the settlor for a period of six years or less; and (c) cases where the income is applicable for a child (*p*) of the settlor, but for a period less than the life of the child. In the last class of cases so long as the child is an infant and unmarried, and in the remainder without limit of time, the income is deemed to be that of the person who was able to obtain its enjoyment for himself, or (as the case may be) of the settlor, if living, and not of any other person. As regards a disposition in favour of a child, the enactment does not apply to income from capital which will become the child's at the end of the period for which the income is payable to him, nor to income which is applicable for the child during the whole life of

(*l*) *Howe (Earl)* v. *I. R.*, [1919] 2 K. B. 336, *supra*, p. 308.

(*m*) *Committee of A. B.* v. *Simpson* (1928), Rating and Income Tax Newsp., June 23.

(*n*) Act of 1922, s. 20, *infra*, p. 547.

(*o*) "Disposition" is defined in sub-sect. (5).

(*p*) See sect. 20 (5).

the settlor. A disposition which is excluded from one of the above classes (a), (b) or (c), may yet be within either of the others; and a bond for three years in favour of a child which is excluded from the operation of class (c) because he is of full age, is within class (b), so that the annuity paid under the bond is still deemed to be income of the father (*q*).

In classes (b) and (c) the settlor can recover any income tax or sur-tax paid by him in respect of the income in question from the trustee or other person to whom the income is payable (*r*); for purposes of sur-tax, that income is treated as the highest part of the income of the person who paid the tax (*s*). Conversely, he is to hand over to such trustee or other person any additional allowance or relief (*t*) which he has obtained (by way of repayment of tax), owing to his income having been deemed to include the income payable to the trustee or other person (*u*).

On the other hand, many classes of dispositions transfer the income to the beneficiary, for purposes of income tax and sur-tax, as well as for other purposes. Thus, income to which a person has become entitled by a parol declaration of trust enforceable in equity may (if the disposition is not within any of the classes specified in sect. 20 of the Act of 1922) form part of the total income of that person, and not of the settlor (*x*). The purchase of shares in a company (*y*), or of a farm (*z*), by a father for his pupil children with intention of making them a gift, coupled with the registration of the shares, or the taking of a conveyance, in the name of the child or children, may transfer the income from

(*q*) *Gillies* v. *I. R.*, [1929] S. C. 131.

(*r*) Sect. 20 (2), *infra*, p. 548; a certificate which can be required from the Commissioners concerned is conclusive of the amounts of the income and of the tax paid.

(*s*) Sect. 20 (4); sur-tax is charged at increasing rates on the higher parts of the total income: *vide infra*, p. 323.

(*t*) See pp. 11 *sqq.*, *supra;* and as to repayment, see pp. 388 *sqq.*, *infra*.

(*u*) Sect. 20 (3), *infra*, p. 548; the General Commissioners are empowered to decide finally as to the amount of any payment and as to its proper apportionment.

(*x*) *Allan* v. *I. R.* (1925), 9 Tax C. 234; *Brennan's Trees.* v. *Scanlan* (1924), *ibid.* 427.

(*y*) *I. R.* v. *Wilson*, [1928] S. C. (H. L.) 42; 13 Tax C. 789.

(*z*) *Linton* v. *Chapman*, [1928] S. C. 209; 13 Tax C. 448.

the shares, or the rent of the farm (even if the father pays the rent), to the children, so as to make it a part of their total income. But a transfer of the income from shares gifted by a father will not take place until the shares are registered in the name of the child (*a*). And a scheme framed by a large shareholder in a company to transfer shares to employees of the company, as soon as the accumulated dividends should amount to the par value of the shares, does not prevent the dividends in the meantime from continuing to form part of the total income of the intending donor (*b*). Income directed to be accumulated for an infant is referred to in the following Chapter (*c*), together with income subject to a trust for the reduction of debt.

(*a*) *Allan* v. *I. R.*, *supra*.
(*b*) *I. R.* v. *Parsons* (1928), 44 T. L. R. 420.
(*c*) *Infra*, p. 325. See also p. 393 as regards claims for repayment.

CHAPTER XIV.

SUR-TAX.

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Nature of the Tax.

INSTEAD of the super-tax, there is charged from the year 1928—29 onwards, in addition to the income tax at the standard rate on the particular sources of income which have been considered in Chapters II.—X., a further income tax at other rates, fixed by the Finance Act of each year; this is called the "sur-tax" (*a*). It is charged only upon individuals, and upon the excess over a stated amount of the total income of the individual for any year of assessment; that "stated amount" is also fixed by the annual Act. But it is not payable, as is the income tax proper, in the year of assessment itself; the sur-tax is a "deferred instalment of income tax" (*b*), and is payable on or before the 1st January in the following year (*c*). Thus, the amount on which sur-tax is assessable for the year 1928—29 is the excess over 2,000*l.* of the total income for that year, which ends on 5th April, 1929; the sur-tax is payable on or before 1st January, 1930 (*c*).

(*a*) Act of 1927, s. 38 (1), with proviso (b), *supra*, p. 2; *infra*, p. 598.

(*b*) *Ibid.*; cf. *Bowles* v. *A.-G.*, [1912] 1 Ch. 123, per PARKER, J., at pp. 135, 136.

(*c*) Sect. 42 (1); if the assessment is not made before that date, the sur-tax is payable as soon as it is signed and allowed: *ibid.*

It is immaterial that the individual may have ceased, before or during the year in which the sur-tax is payable, to have possessed any source of income which contributed to his total income for the year of assessment (*d*), or that his income from any such source may have diminished (*e*); and if he has died before the commencement of the year in which the tax is payable, or dies during that year, his representatives are still liable to pay the sur-tax (*f*). Any adjustment on account of any such change, or death, which has taken place during the year of assessment will affect the amount payable, only by reducing the total income for that year to the same extent to which it has reduced the income from the particular source for the purposes of ordinary income tax (*g*).

The sur-tax is at present charged on an ascending scale in respect of a "total income from all sources" exceeding 2,000*l.*; but there is no charge in respect of the first 2,000*l.* of the income (*h*). So that an individual who has a total income of, say, 2,300*l.* is chargeable to sur-tax on the balance of 300*l.* only.

As the sur-tax applies only to the income "of an individual" (*i*), companies (speaking generally) and other bodies of persons (*k*) are not liable to it; but a member of a partnership may be so, if his own total income exceeds the limit (*l*); and, in certain cases, sur-tax may be assessed on the members of a company, in the name of the company (*m*).

(*d*) As to a trade or profession which he no longer carries on, cf. *Bartlett* v. *I. R.*, [1914] 3 K. B. 686; *I. R.* v. *Roberts* (1925), 41 T. L. R. 623, *supra*, p. 313; *FitzGerald* v. *I. R.*, [1919] 2 K. B. 154; as to a non-resident who has ceased to have taxable income in this country, cf. *Crane* v. *I. R.*, [1919] 2 K. B. 616, *infra*, p. 339.

(*e*) Cf. *Gaunt* v. *I. R.*, [1913] 3 K. B. 395, *supra*, p. 313.

(*f*) Sect. 6 of the Act of 1918, which gave relief in the case of death during the year in which super-tax was assessed and payable, is repealed with the rest of Part II.; see Act of 1927, 6th Sched. Part I., *infra*, p. 609. As to executors, &c., *vide infra*, p. 343.

(*g*) *Supra*, p. 310, note (*y*).

(*h*) Act of 1927, s. 38, *infra*, p. 598, read with Act of 1928, s. 15 (1) (b), *infra*, p. 610, where the present scale will be found.

(*i*) Act of 1927, s. 38 (1).

(*k*) *Vide supra*, p. 264.

(*l*) *Gaunt* v. *I. R.*, *supra*.

(*m*) *Vide infra*, p. 333.

Sur-tax is included in calculating the amount of relief to be given in respect of Dominion income tax (which includes Dominion super-tax) (*n*), but the relief is given by way of reduction or repayment of income tax (*o*). In those exceptional cases, however, in which this relief is given by way of reduction of income charged, the income is reduced for sur-tax purposes as well as for income tax proper (*p*).

"*Total Income from all Sources.*"

The general meaning of "total income from all sources" has been considered in the last Chapter, and what has there been said applies to sur-tax assessments, as well as to income tax relief. But there are further points, and there are certain other provisions, which affect the total income as a basis of assessment for sur-tax; these will now be dealt with (*q*). First, there is no allowance in respect of earned income, the full amount of which is included (*r*); nor is there any deduction of a "personal allowance" such as is allowed for income tax proper by sect. 18 of the Finance Act, 1920 (*s*); nor any deduction for income tax already paid (*t*). Secondly, where the individual is in the service of the Crown abroad, any sum which the Treasury may allow as necessary expenses of his office and for which an allowance has not already been made is to be excluded (*u*). Thirdly, there is a specific exemption from sur-tax (as from income tax) for the incomes of High Commissioners, Agents-General, and their personal staffs, and of official agents for Dominions (*x*).

Cases have arisen where it has been difficult to decide whether the income has been alienated, or whether it remains the income of the original owner, subject to some arrange-

(*n*) *Vide supra*, pp. 25—31. (*o*) Act of 1927, s. 42 (6), *infra*, p. 601.

(*p*) *Vide supra*, p. 30.

(*q*) See Act of 1927, s. 38 (2), *infra*, p. 598, which applies to the sur-tax such of the super-tax enactments as are not repealed by the Act of 1927. Several of the provisions repealed by that Act are re-enacted in sect. 42.

(*r*) Finance Act, 1920, s. 15 (4), *infra*, p. 529.

(*s*) *Vide supra*, p. 14; *Davis* v. *I. R.*, [1923] 1 K. B. 370.

(*t*) *Davis* v. *I. R.*, *supra*. (*u*) Act of 1927, s. 42 (5).

(*x*) Act of 1923, s. 19; Act of 1925, s. 26, *infra*, pp. 562, 575.

ment as to how it shall be applied. Thus, income from the funds included in a marriage settlement was impressed with an irrevocable trust to pay off the debts of the settlor, previously charged upon those funds; and that income was held not to form part of the total income (*y*). That case has been distinguished by the English Court of Appeal, who held that where a lady, in addition to effecting a policy on her own life, gave certain shares to an insurance company as security for a loan, and the company were to apply the income (*inter alia*) in payment of premiums and reduction of the principal, the portions of the income so applied remained the income of the lady, and therefore formed part of the total income of the husband; the loan had been incurred in order to assist him (*z*). It is submitted that there is no true distinction between the two cases, and that the principle of the Scottish decision was correct.

Income accumulated for the benefit of an infant may form part of the infant's total income year by year as it accrues (*a*). The effect of dispositions of landed property on the total income of the beneficiary has already been considered (*b*).

The income of funds subject to a valid trust for the reduction of the National Debt does not form part of the total income of the settlor (*c*).

The additional provisions recently enacted, to enable sur-tax to be levied on the incomes of certain companies, to prevent the avoidance of sur-tax by sales *cum* dividend, and to afford relief in cases of purchase *cum* dividend, and in cases where the income received in one year represents more

(*y*) *I. R.* v. *Wemyss,* [1924] S. C. 284; 8 Tax C. 551, *supra,* p. 311; cf. also *Lord Hamilton of Dalzell* v. *I. R., supra,* p. 312.

(*z*) *I. R.* v. *Paterson* (1924), 9 Tax C. 163. In *Perkins' Exor.* v. *I. R.* (1928), 13 Tax C. 851, it was held that there had clearly been no alienation.

(*a*) *I. R.* v. *Pakenham; Gascoigne* v. *I. R.,* [1928] 1 K. B. 118; *Stern* v. *I. R.* (1929), Rating and Income Tax, July 20 (C. A.). In *I. R.* v. *Pakenham,* [1927] 1 K. B. at p. 609, ROWLATT, J., doubted the correctness of his earlier decision to the contrary (on a different settlement) in *I. R.* v. *Blackwell,* [1924] 2 K. B. 351; that decision had, indeed, been affirmed by the C. A., [1926] 1 K. B. 389, but upon other grounds.

(*b*) *Supra,* p. 312.

(*c*) Act of 1928, s. 30 (1), *infra,* p. 613.

than is properly attributable to that year, must now be considered in some detail.

Sur-Tax on the Income of Companies: What Companies are Affected.

The provisions (*d*) for the levy of sur-tax on the income of companies apply (*e*) to any company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies Acts, 1908—1917, or 1929 (*f*), so long as the company is under the control of not more than five persons and is not a subsidiary company, or a company in which the public are substantially interested. A company, therefore, which is a "subsidiary company," or "a company in which the public are substantially interested," is not within the section, although it is under the control of five persons or less. A "subsidiary company" is a company which is controlled by another company or companies, by reason of their beneficial ownership of shares, but if the controlling company or any of the controlling companies is within the scope of the section, then the company thus controlled is not to be deemed a "subsidiary company"; in such a case, the controlled company is itself within the scope of the section, unless it is a company in which the public are substantially interested. Again, if one or more companies share the control of another company with individuals, the whole number of controlling persons not being more than five, the controlled company is not a "subsidiary company" and is within the scope of the section, unless the public are substantially interested.

The company is deemed to be one in which the public are substantially interested if shares not entitled to a fixed rate of dividend (even though they may participate further in profits) to an extent of not less than 25 per cent. of the voting power have been unconditionally allotted to the

(*d*) Act of 1922, s. 21 and 1st Sched., as amended by Act of 1927, s. 31, sub-ss. (1), (2), (3), (7), (8), *infra*, pp. 549, 556; Act of 1927, s. 31, sub-ss. (4)—(6), s. 32, *infra*, pp. 593, 594.

(*e*) This and the ensuing paragraphs are intended to give the effect of sect. 21 (6) of the Act of 1922, as amended, *infra*, p. 551.

(*f*) See definition in Act of 1929 (19 & 20 Geo. 5, c. 23), s. 380; Interpretation Act, 1889, s. 38 (1).

public or acquired by the public, and are beneficially held by the public, at the end of the relevant period (*g*), and have during that period been dealt in and had an official quotation on a stock exchange in the United Kingdom; a company which is within the scope of the section is not for this purpose to be reckoned among "the public."

"Control" is also elaborately described. If the majority of the voting power or shares is in the hands of not more than five persons (reckoned as below), or if the control is by any other means whatever in the hands of that number, then the company is within the scope of the section, unless it is a subsidiary company or one in which the public are substantially interested. As far as the majority of voting power or shares is concerned, the number of persons in control is to be calculated by including the relatives or nominees of a person with him as one person; "relative" means a husband or wife, ancestor or lineal descendant, brother or sister—but does not include a cousin unless he or she is the husband or the wife; a nominee is a person who may be required to vote as directed by another, or who holds shares directly or indirectly on another's behalf. Partners, again, are to be reckoned as a single person, and so are the persons interested in a deceased person's estate or in property held on a trust; but any individual or any group of individuals interested in more than one estate, or trust fund, under separate trusts, must (it would appear) be reckoned as being a number of persons equal to the number of different estates or trusts. The phrase "voting power or shares" must, it is submitted, be read as a whole; it can scarcely have been intended that possession of the majority of the shares is to be deemed to be "control," if by the articles it does not carry with it the majority of the voting power.

The word "control" appears to bear "the well-known meaning" of the possession (by the persons in question) of a preponderating vote on any question that may come before the shareholders at a general meeting (*h*).

(*g*) *Vide infra*, p. 328.

(*h*) The phrase "controlling interest" was thus interpreted where it occurs in Finance Act, 1916, s. 49 (1) (excess profits duty): *Glasgow Expanded Metal Co.*,

Object of the Provisions.

The object of these provisions is to enable the Special Commissioners—if any company such as is above described appears to them not to have distributed (within a reasonable time after the end of any year or period for which accounts are made up) a reasonable part of its actual income for all sources for that year or period, to its members, either as dividend or in such other form as will make them liable to include the amount received in a return of total income for purposes of sur-tax (*i*)—to take such action as will nevertheless enable sur-tax to be levied on the amount that has not been so distributed (*k*). For this purpose, the actual income of the company is to be calculated as for income tax (*l*), except that the profits of the year or other period in question are to be taken, and not those of the preceding year (*m*). It is immaterial whether the failure to distribute a reasonable part of the income is due to a desire to avoid sur-tax, or to any other cause (*n*). A company which is within the scope of these provisions may take steps to have its position under them ascertained, in the manner described below (*o*).

The Special Commissioners are directed (*p*), in determining whether a reasonable part of the income has been distributed, to have regard, not only to the current requirements of the business, but to what is necessary or advisable for its maintenance and development; but any sum expended or applied (in any form) towards payment for the first sub-

Ltd. v. *I. R.*, [1923] S. C. 365; 12 Tax C. 573; and in Act of 1920, s. 53 (2) (c) (corporation profits tax): *B. W. Noble, Ltd.* v. *I. R.* (1926), 12 Tax C. 911.

(*i*) See "Dividends: Bonus Shares," &c. in Chap. XIII., *supra*, pp. 313—315.

(*k*) Act of 1922, s. 21 (1), *infra*, p. 549.

(*l*) In the case of a private company whose object was to hold endowment policies, the interest on National War Bonds transferred to the company as premiums for the policies formed (after deducting expenses of management) "its actual income" within the meaning of this provision: *Endowment Co., Ltd.* v. *I. R.* (1929), 8 A. T. C. 107.

(*m*) 1st Sched. para. 6, *infra*, p. 558.

(*n*) *D. Carlaw & Sons, Ltd.* v. *I. R.*, [1926] S. C. 870; 11 Tax C. 96.

(*o*) *Vide* p. 335.

(*p*) Sect. 21 (1), 1st proviso, and paragraph and proviso subsequent thereto, *infra*, p. 549.

stantial business, undertaking or property of the company is to be regarded as income available for distribution, unless this is done in pursuance of an obligation entered into by the company before the 4th August, 1914, in which case it is in the discretion of the Commissioners whether it shall be so regarded or not. Any sum expended or applied in pursuance or in consequence of any fictitious artificial transaction is also to be regarded as income available for distribution. But the fact that any sum has been expended or applied as above described is not by itself sufficient to make the section enforceable; it may be that, even when any such sum is included in the available income, the company may still be found to have distributed a reasonable part of the whole, in view of maintenance and development, as well as of current requirements.

The "members" of the company for the purpose of the section include not only all who have a share or interest in the capital of the company, but also any person who has a share or interest in its profits or income, *e.g.*, a director who is entitled as such to a percentage of the profits available for distribution (*q*).

Method of Enforcement: Appeal against "Direction."

The Special Commissioners may bring these provisions into play in one of two ways. They may either commence by giving a notice in writing to any company, which appears to them to be within the description already discussed (*r*), requiring a statement of the actual income for any year or other period for which the company's accounts are made up, together with a copy of those accounts, and "such particulars as the Commissioners may reasonably require as to the income of the company" and the manner in which it has been dealt with; and also names and addresses and particulars of interest of all "members" of the company (*s*). Or, the Commissioners may proceed, without such previous

(*q*) Sect. 21 (7), *infra*, p. 552.
(*r*) *Supra*, p. 326.
(*s*) Act of 1922, 1st Sched. para. 4, *infra*, p. 557. As to "members," *vide supra*.

requirement, to direct (by notice in writing to the company) that the actual income of the company from all sources for any year or other period for which accounts have been made up shall, for purposes of assessment to super-tax, be deemed to be the income of the members (*t*). In cases where the company has of its own motion forwarded accounts to the Special Commissioners, the powers of the Commissioners to take such action of either kind, and the time within which action may be taken, are limited (*u*).

In either case the directors of the company may, within twenty-eight days of the issue of the notice or the giving of the direction, send to the Special Commissioners a statutory declaration stating that there has not been and will not be any avoidance of super-tax by reason of a failure to distribute a reasonable part of the income, and stating the relevant circumstances. If this is done, the Special Commissioners are not to take any further action, unless they see reason to the contrary. If they do see such reason, they are to send a certificate to that effect, with the statutory declaration, to the Board of Referees (who are appointed for this and other purposes), as well as copies to the Commissioners of Inland Revenue; the latter send a counter-statement within twenty-eight days; the Board of Referees are to consider all three documents and decide whether there is a *primâ facie* case. Their determination on this point is final and conclusive; if the Board decide that there is not a *primâ facie* case, no further action can be taken; if they decide that there is, the original notice or direction (given by the Special Commissioners) is considered as having been given on the date when notice of the Board's determination is given to the company (*x*).

Where the proceedings are to continue, and a notice calling for a statement of actual income has been issued, and the company fails or refuses to deliver a statement, or renders a statement with which the Special Commissioners are not

(*t*) Sect. 21 (1), *infra*, p. 549.

(*u*) Act of 1928, s. 18 (3), *vide infra*, p. 336.

(*x*) Act of 1922, 1st Sched. para. 5, *infra*, p. 557, as substituted by Act of 1927, s. 31 (7).

satisfied, they may make their own estimate (*y*). Upon consideration of the actual income, as so estimated, or as shown in the statement rendered, they may give a "direction" as above described, if they have not already done so (*z*).

If the company are aggrieved by a "direction" (whether given after the issue of a notice requiring a statement, or without the issue of such a notice), they may give notice of appeal to the Special Commissioners against the direction within twenty-one days after the date of the notice by which the "direction" is given (*a*). Either the company, or the Commissioners of Inland Revenue, if dissatisfied with the result of this appeal, may within twenty-one days appeal further to the Board of Referees, who must rehear the appeal (*aa*). Either the Special Commissioners or the Board of Referees may on their determination of the appeal be required by either party to state a case for the opinion of the High Court on a point of law (*b*).

It will be observed that, where the matter has been already brought before the Board of Referees by means of a statutory declaration as above described, and that Board has determined that there is a *primâ facie* case, there is still a right of appeal to the Special Commissioners (and from them to the Board of Referees) against a direction previously given; the notice of appeal to the Special Commissioners must be given within twenty-one days from the receipt of notice of the Board's determination (*c*).

Any application to treat the income to be apportioned as received on a date other than that to which the company's accounts have been made up must be made within the time limited for appealing against the direction (*d*).

(*y*) Act of 1922, 1st Sched. para. 7.

(*z*) Sect. 21 (1), *infra*, p. 549.

(*a*) 1st Sched. para. 1, *infra*, p. 556.

(*aa*) 1st Sched. para. 2.

(*b*) *D. Carlaw & Sons, Ltd.* v. *I. R.*, [1926] S. C. 870; 11 Tax C. 96. As to cases stated, see Chap. XVII.

(*c*) Act of 1922, 1st Sched. para. 1, read with para. 5 (f), *infra*, p. 558.

(*d*) See "Effect of Apportionment," *infra*.

Apportionment: Appeal against Apportionment.

When a "direction" has been given, and is not appealed against, or is confirmed on appeal, the actual income of the company (as ascertained for purposes of the "direction," see above) is, for the year or other period specified in the direction, deemed to be income of the "members" (*e*). The Special Commissioners proceed to apportion that income among the members "in accordance with" their "respective interests" (*f*). The effect of this phrase has not been judicially determined; it has been assumed (*g*) that the whole income is in every case to be apportioned among the members; but in view of the very wide definition of "member" (*h*), circumstances may be conceived in which this is impracticable.

Notice of the apportionment is to be given by serving on the company a statement showing the amount of the actual income adopted, and the amount apportioned to each member, or to each class of shares, as the Special Commissioners think fit (*i*). The company may appeal by giving notice within twenty-one days after the date of the above notice, and may apparently challenge either the amount of actual income or the amounts apportioned, or both; there is power to require a case to be stated (*k*).

Effect of Apportionment.

That part of the company's income for the account year or other period, which is apportioned to each member, less any amount already distributed to him by the company so as to attract a liability to super-tax or sur-tax, is to be assessed and charged to sur-tax (*l*). This sum is deemed to have been received by the member on the date to which the accounts were made up, and is to be included for pur-

(*e*) Act of 1922, s. 21 (1), (7), *infra*, pp. 549, 552.

(*f*) Sect. 21 (1); 1st Sched. para. 8.

(*g*) *D. Carlaw, Ltd.* v. *I. R.*, *supra*, note (*b*); the point did not arise for decision.

(*h*) Sect 21 (7), *vide supra*, p. 329.

(*i*) 1st Sched. para. 10, *infra*, p. 558.

(*k*) *Ibid.*; see Chap. XVII.

(*l*) Sect. 21 (1), *infra*, p. 549.

poses of sur-tax in his total income for the year in which that date falls. But if application has been made by the company during the time allowed for appealing against the *direction* (*m*)—not the apportionment—the Special Commissioners may treat the income as if it had been received on such date as they determine to be just, having regard to the dates when the company itself has made distributions of income (*e.g.*, has declared a dividend), and so as to avoid as far as possible the inclusion of more than one year's income in a single year's sur-tax assessment (*n*). The amount apportioned to each member is taxable to sur-tax at the highest rate to which the amount of that member's "total income" makes him liable (*o*); if it does not bring his total income above 2,000*l.*, he is, of course, not liable to pay sur-tax in respect of it. A notice of charge to sur-tax must be served on the member (*p*); and the Special Commissioners may require an amended sur-tax return from him (*q*). If within twenty-eight days from the date of the notice of charge the member does not "elect to pay" the tax, a notice of charge is to be served on the company, and the sur-tax becomes payable by the company (*r*); but always according to the rate of tax applicable to the highest part of the individual member's income. If he elects to pay the tax himself, the election is presumably to be made by letter sent to the Special Commissioners so as to reach them within the time above stated. The tax may also be recovered from the company, if any member who has so elected fails to pay within the time limited (*s*). Provision is made against sur-tax being charged a second time in respect of the income when it is subsequently distributed by the company (*t*).

(*m*) *Supra*, p. 331.

(*n*) Act of 1922, 1st Sched. para. 9, *infra*, p. 558, as substituted by Act of 1927, s. 31 (8).

(*o*) 1st Sched. para. 8, as amended; see p. 323, *supra*, and Act of 1928, s. 15 (1) (b), *infra*, p. 610.

(*p*) Act of 1922, s. 21 (3), *infra*, p. 550.

(*q*) 1st Sched. para. 8, *infra*, p. 558. (*r*) Sect. 21 (3), *infra*, p. 550.

(*s*) That is, by the 1st January next after the end of the year of assessment, or within twenty-eight days of the date of election, whichever is later: Act of 1922, s. 21 (3), proviso, read with Act of 1927, s. 42 (1), *infra*, p. 601.

(*t*) Act of 1922, s. 21 (4), *infra*, p. 550.

Winding-up.

In applying these provisions to a company which is within the description above considered (*u*), and for the winding-up of which an order has been made or a resolution passed, certain additional directions are to be followed (*x*). As regards the broken period between the date to which the accounts for the last year or other account period have been made up and the date of the winding-up order or resolution—and also as regards the next preceding year or any account period or periods which ended within that year—sect. 21 (1) of the Act of 1922 is to apply as if the words "within a reasonable time" were omitted; that is to say, the Special Commissioners are to decide whether a reasonable part of the company's total income has been distributed to the members, having regard to the other considerations indicated in that sub-section (*y*), but without regard to any suggestion that the reasonable time for distribution had not elapsed before the winding-up, or that further results of the company's working might reasonably have been awaited. Further, it does not appear open to a company (in respect of the broken period above described) to contend that as the income of that period will be distributed as assets in the winding-up, it should not be apportioned to the members and charged with sur-tax (*z*).

The income apportioned to a member for the broken period is deemed to have been received by him on the date of the winding-up order or resolution, and it, therefore, forms part of his total income for purposes of sur-tax in the year in which that date occurs (*a*).

Where the company is in liquidation, any of the notices referred to in the above pages that may be served on the company is to be served on the liquidator; he is responsible

(*u*) Sect. 21 (6), *vide supra*, p. 326.

(*x*) Act of 1927, s. 31 (4)—(6), *infra*, p. 593.

(*y*) *Vide supra*, p. 328; and cf. *L. Sutcliffe, Ltd.* v. *I. R.*, (1928), 7 A. T. C. 234.

(*z*) Sect. 31 (4); if this view is correct, the decision in *I. R.* v. *Burrell*, [1924] 2 K. B. 52, *supra*, p. 316, has no application here.

(*a*) Sect. 31 (6), *infra*, p. 593.

for furnishing statements, &c., and is entitled to appeal and so on in place of the company; and if any member elects not to pay the super-tax charged on him, or fails to pay after electing to do so, the liquidator becomes responsible for the payment (*b*).

Shareholding, &c. Companies.

Sect. 32 of the Act of 1927 provides for the case where a member of a company whose income has been apportioned under sect. 21 of the Act of 1922 (as amended) is itself a company; and for the further case where a member of that second company is itself a company, and so on. The directions of the substantive section are applied, *mutatis mutandis*, to these cases. The sur-tax is to be assessed on the members of each of these companies in the name of the first company, not of the second or any subsequent company; and the date on which the income is deemed to have been received (for purposes of sur-tax) is the date fixed for this purpose with regard to the first company (*c*).

A company may be a "member" of another company if it has a share or interest in the capital or profits or income of the latter (*d*).

Action by a Company to Ascertain its Position.

A company to which sect. 21 of the Act of 1922 as amended by sect. 31 of the Act of 1927 (*e*) applies, may of its own motion forward to the Special Commissioners a copy of the accounts for any year or period after they have been adopted at a general meeting with a copy of the report (if any) and with any further information they may think fit to forward (*f*). Not later than twenty-eight days after receipt, the Special Commissioners may call for further particulars (*g*). The Commissioners may within three

(*b*) Sect. 31 (5); see "Effect of Apportionment," *supra*, p. 332.
(*c*) As to these dates, *vide supra*, p. 332, and "Winding-up," *supra*.
(*d*) See definition in Act of 1922, s. 31 (7), *supra*, p. 329.
(*e*) See "What Companies are affected," *supra*, p. 326.
(*f*) Act of 1928, s. 18 (1), *infra*, p. 612.
(*g*) Sub-sect. (2).

months after receiving the accounts, &c., which the company have voluntarily furnished, or, if they have called for further particulars, within three months after these have been received, or after the time for furnishing them has expired, intimate that they intend to take further action under sect. 21 (as amended) for that year or period (*h*). If they do not give such an intimation, the Commissioners have no power to take any further action in respect of that year or period. And even if such an intimation is given, their time for giving a notice requiring a statement of actual income for that year or period is limited to six months after the date of the intimation; and they cannot give a direction that the company's income is to be deemed to be income of the members, unless they have given such a notice within the time thus limited (*i*).

Sales cum *Dividend.*

Sect. 33 of the Act of 1927 contains provisions designed "for preventing the avoidance of super-tax by sales *cum* dividend, &c.," as the marginal note conveniently describes them; but the expression "sales *cum* dividend" does not appear in the section itself. These provisions apply generally to stocks or securities entitled to interest or dividend which is payable at a fixed rate only and which is not dependent on the earnings of a company, by whatever mode these have been sold or dealt in; but as regards other stocks and securities, and as regards shares, they apply only in cases where the transactions concerned have not been effected through a stock exchange in the United Kingdom and by a transfer which has borne duty at 10*s.* for every 50*l.*, or 1*l.* per cent. (*k*). The section applies only to individuals, and does not affect companies or other bodies.

(*h*) Sub-sect. (3).

(*i*) See "Method of Enforcement," *supra,* p. 329; it is only in a case where the company has taken advantage of sect. 18 of the Act of 1928 that the giving of a notice under Rule 4 of the 1st Sched. to the Act of 1922 is made a condition precedent to the giving of a direction under sect. 21 (1); in other cases these two methods of procedure are alternative.

(*k*) Act of 1927, s. 33 (7), *infra,* p. 596; see Stamp Act, 1891, 1st Sched., "Conveyance on Sale," as amended by Finance Act, 1920, s. 36 (1).

The income of the stock, &c. concerned is deemed to have accrued from day to day during any stated period in respect of which it is payable, or (if there is no such period) during the twelve months before it was declared payable, or any shorter period since the last previous declaration of a final dividend (*l*). The income is assumed to be apportioned to the individual according to the time for which he is owner of the stock, &c., and he is made liable for sur-tax as if he had received that sum; but he is allowed a certain margin, and he is so liable only if by the sales or other dealings he has avoided (or would but for this section avoid) more than 10 per cent. of the sur-tax for any year, which he would have paid if the income had in fact accrued from day to day. And no assessment is to be made under this section if the individual proves that the avoidance was exceptional and not systematic, *and* (even though it was not "systematic") that there was no such avoidance in any of the three preceding years (*m*). Note that the 10 per cent. is calculated, not on the amount assessable, but on the tax payable in view of the graduated scale of sur-tax (*n*); and that, if more than 10 per cent. of the tax has been avoided, the individual is assessable on the whole amount of the income ascertained as above.

The section is brought into play by the service of a notice by the Special Commissioners requiring from the individual concerned a statement of stocks, securities or shares to which the section applies as above described, in which he has had a beneficial interest, and from which he derived no income during a certain period, or less than the income he would have received if it had accrued from day to day. The period for which the information is required must be indicated in the notice; this cannot be any period earlier than the year commencing April 6th, 1927. Not less than twenty-eight days must be allowed in the notice, for furnishing the statement. The statement required must be furnished (under

(*l*) Act of 1927, s. 36 (1), *infra*, p. 597.

(*m*) Sect. 33 (3), (4), *infra*, p. 595.

(*n*) See p. 323, *supra*.

penalties), even though an assessment to super-tax or sur-tax has already been made for the relevant year. If it is not furnished, or if the statement furnished is not satisfactory, the Special Commissioners may make their own estimate (*o*).

Purchases cum *Dividend.*

Where the sale or transfer of any assets to an individual has brought the sur-tax payable by him to more than 10 per cent. above the amount that would have been payable for any year if the income from those assets (and from any other assets sold or transferred by him) were deemed to have accrued from day to day, application may be made to have the sur-tax assessment calculated as if the income from the assets bought, &c., and from those sold, &c., had both accrued from day to day (*p*). This section applies to all assets of any kind. The income is deemed to have accrued from day to day during the period indicated in sect. 36 (1) (*q*).

In order to obtain relief under sect. 35, the individual must make application, either in making his sur-tax return for any year, or within the twenty-eight days after receiving notice of assessment (or additional assessment) to sur-tax for any year which are allowed for appealing against a sur-tax assessment (*r*). The existence of the circumstances above indicated must be proved to the satisfaction of the Special Commissioners (*s*).

If the application is successful, the individual's total income, so far as the assets sold or transferred to him are concerned, is reduced for the purposes of sur-tax to the income he would have received from the assets during the period after that sale or transfer if the income had accrued from day to day, instead of being paid in a lump sum.

(*o*) Sect. 33 (1), (2), (5), (6), sect. 37, *infra*, pp. 595, 598. As to appeal, see p. 344, *infra*.

(*p*) Sect. 35, *infra*, p. 597.

(*q*) See p. 336, *supra*.

(*r*) See pp. 342, 343, *infra*, and Chap. XVII.

(*s*) Sect. 35. An appeal lies against their decision: *infra*, p. 344, and sect. 36 (2).

Income of More than a Year.

In the last Chapter cases have been cited in which dividends or interest received in a particular year were held to form part of the total income of that year, although the payments represented profits earned, or had accrued due, in an earlier period (*t*). Relief may be obtained in regard to sur-tax (*u*) where it can be proved that the income from any assets represents more than the income attributable to a period of one full year, and that in consequence the amount of sur-tax payable by an individual for that year exceeds by more than 5 per cent. the tax payable on the income attributable to that year, if it had "accrued from day to day," over the period indicated in sect. 36 (*x*). The time for making application is limited as above stated (*y*).

The Special Commissioners, however, in giving the applicant such relief as may be just, are to have regard to any liability or additional liability to super-tax or sur-tax which would have arisen in preceding years if the income had been treated as accruing from day to day (*z*). An appeal lies to the Special Commissioners, as in cases of assessment to sur-tax, and a case for the opinion of the High Court may be claimed (*a*).

Non-Resident Persons.

Although the sur-tax is chargeable in respect of the incomes of individuals, those individuals need not be resident in the United Kingdom in order to be liable (*b*); even a non-resident alien is liable (*c*). It is sufficient if the individual has income which is chargeable to the ordinary income tax, whether by direct taxation (*d*) or by deduction

(*t*) *Hurll* v. *I. R.; Duncan* v. *I. R., supra,* p. 314; *Leigh* v. *I. R., supra,* p. 317.
(*u*) Act of 1927, s. 34, *infra,* p. 596.
(*x*) *Vide supra,* p. 336. (*y*) *Supra,* p. 338.
(*z*) Sect. 34, last para. (i), (ii). An appeal lies against their decision: *infra,* p. 344; sect. 36 (2).
(*a*) Sect. 36 (2); *vide infra,* p. 343, and Chap. XVII.
(*b*) *Brooke* v. *I. R.,* [1918] 1 K. B. 257; *vide supra,* p. 275.
(*c*) *Crane* v. *I. R.,* [1919] 2 K. B. 619; *Whitney* v. *I. R.,* [1926] A. C. 37.
(*d*) As in *Crane* v. *I. R., supra.*

at the source (*e*), provided that the total income so chargeable is in excess of 2,000*l*. for any year of assessment. He will be liable to pay sur-tax on the excess on or before the 1st January in the following year, although in that year he may no longer have any income taxable in this country (*f*).

The sur-tax payable by a non-resident may be assessed in the name of an agent or other resident person (*g*), and if the non-resident has no representative in this country, he may be assessed in his own name (*h*).

Husband and Wife.

The income of a wife living with her husband is normally treated as income of the husband for income tax purposes (*i*), and consequently also for purposes of sur-tax. But in the year in which a marriage takes place, the wife's income for the period to the date of the marriage forms part of her total income (*k*), which is separately chargeable to sur-tax. The wife's income for the period only from the date of the marriage to the end of the year forms part of the husband's total income for that year (*l*). If an application is made by either husband or wife before the 6th July in the year in which the sur-tax is payable (*m*), the sur-tax will be charged separately on the income of the husband and on that of the wife; such an application affords no relief as to the total amount payable (*n*), but it may relieve the husband of liability after his wife's death if he survives her.

(*e*) As in *Brooke* v. *I. R.* and *Whitney* v. *I. R.*, *supra*.

(*f*) The possession of income in the year in which the tax is due (*vide supra*, p. 322) is clearly irrelevant under sects. 38 and 42 (1) of the Act of 1927, as it was held to be under the super-tax provisions in *Crane* v. *I. R.*, *supra*.

(*g*) The provisions applicable to ordinary income tax in such cases (*supra*, p. 275) are applied to sur-tax by Act of 1927, s. 42 (7), *infra*, p. 601; see also sect. 44 (2); *vide infra*, p. 349.

(*h*) *Whitney* v. *I. R.*, *supra*; cf. *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89, *supra*, p. 278.

(*i*) *Vide supra*, p. 279; *Eadie* v. *I. R.*, *infra*.

(*k*) *I. R.* v. *Brooke*; *Murray* v. *I. R.*; *I. R.* v. *Leith*, [1923] 2 K. B. 815.

(*l*) *I. R.* v. *Bell*, *ibid.*

(*m*) *Infra*, p. 343.

(*n*) Act of 1927, s. 42 (9), *infra*, p. 602; cf. the provisions for a similar purpose as regards income tax proper, *supra*, p. 280, and *In re Ward*, [1922] 1 Ch. 517, there cited.

On the other hand, if there has been no separate assessment, and the husband dies, the wife's total income for the year in which the death takes place includes only her income for the portion of the year which elapses after her husband's death (*o*), and it is only on that part of her income that she is liable to be assessed to sur-tax for that year.

Where the wife is living separately under an agreement which obliges the husband to pay her a weekly sum during their joint lives, the sums so paid are deductible in computing the husband's total income for sur-tax purposes (*p*).

An order of the Divorce Division for periodical payments to the wife did not necessarily enable the husband to deduct any proportion of the super-tax paid by him (*q*), and probably the same may be said of sur-tax. Where a wife receives an annuity under a deed of separation, and has also an income from other sources, and the husband covenants to pay sur-tax, there may have to be an apportionment (*r*).

Bequests free of Super-Tax or Sur-Tax.

A testator may direct his executors or trustees to pay super-tax or sur-tax, just as he may direct them to pay income tax proper, or to pay an annuity, &c., without deduction of income tax (*s*); and if the devisee or annuitant has other income, the executors or trustees must pay that part of the sur-tax levied on her whole income, which is proportionately attributable to the amount paid by them under the will to her (either directly or indirectly by way of payment of income tax) (*t*), unless, indeed, any such apportionment is excluded by the provisions of the will (*u*). The amount of sur-tax paid by the executors, together with income tax on that amount, will, however, form part of the total

(*o*) *I. R.* v. *Portman* (*Viscountess*), [1923] 2 K. B. 815; see, however, *Leitch* v. *Emmott, supra,* p. 279.

(*p*) *Eadie* v. *I. R.*, [1924] 2 K. B. 198.

(*q*) *Campbell* v. *Campbell,* [1922] P. 187.

(*r*) As in *In re Bowring, infra: Fleetwood-Hesketh* v. *Fleetwood-Hesketh,* [1929] 2 K. B. 55.

(*s*) *Vide supra,* pp. 59, 189.

(*t*) *In re Bowring* (1918), 34 T. L. R. 575; as to deduction of income tax from payments made under a will, see *In re Pettit,* [1922] 2 Ch. 765, *supra,* p. 191.

(*u*) *In re Armaghdale* (*Lord*), [1928] W. N. 26; 44 T. L. R. 239.

income of the payee for the year in which the payment is made (*x*).

The direction in the will must be specific; a gift "clear of all deductions, including income tax" (*y*), and a gift "of such a sum . . . as after deduction of the income tax . . . will leave a clear sum of 2,000*l*." (*z*), have been held not to oblige or allow the executors or trustees to pay the super-tax, which must be borne by the annuitant (*y*). But as the Finance Act, 1927 (*a*), makes it clear that the sur-tax is nothing but a deferred instalment of income tax, it would seem that any direction of this kind must apply to sur-tax as it does to income tax proper. On the other hand, a gift of an annual sum "free of income tax and of all other deductions," with other language showing the intention of the testator, was held to entitle the annuitant to "the naked amount of the annuity free from both income tax and super-tax"; the super-tax was directed to be apportioned between the annuity and the residue on the principle above indicated (*b*); so, where the gift was "without any deduction . . . free from income tax" (*c*).

Assessment: Appeals: Collection and Recovery.

The assessment to sur-tax is made by the Special Commissioners (*d*), and is made for each year in one sum, without regard to the separate sources from which the total income may arise (*d*). But the Special Commissioners may make a new or additional assessment during any time within the year of assessment or within six years thereafter (*e*). Appeals are heard by the Special Commissioners;

(*x*) *Meeking* v. *I. R.* (1920), 7 Tax C. 603; the remarkable result is that if the annuitant lives long enough, the annuity must disappear.

(*y*) *In re Crawshay,* [1915] W. N. 412.

(*z*) *In re Bates,* [1925] 1 Ch. 157.

(*a*) Sect. 38, *vide supra,* p. 598.

(*b*) *In re Doxat,* [1920] W. N. 262.

(*c*) *In re Bowen,* [1925] W. N. 206.

(*d*) Act of 1927, s. 42 (2), *infra,* p. 601, and Regulations applicable under sub-sect. (8), *infra,* p. 616. The decision in *Whitney* v. *I. R., infra,* applies also to a notice of assessment given under these Regulations.

(*e*) Act of 1927, s. 42 (3), which applies the income tax provisions considered at pp. 368—370, *infra;* see also *Meeking* v. *I. R., supra.* With regard to a deceased person, the time is more restricted: see Act of 1923, s. 29 (3), *infra,* p. 567.

subject to this, all the provisions applying to income tax as regards assessment, collection and recovery, appeals, statement of cases for the High Court, and so on, apply to the sur-tax as well, so far as they are applicable (*f*). The rules as to "persons chargeable" are also to apply to the same extent (*g*), so far as individuals are concerned. But, though an incapacitated, non-resident or deceased person may be charged in the name of his representative to income tax, this does not enable an assessment to be made on a guardian or trustee in respect of the total income of an infant (*h*), nor would it appear that any other incapacitated or any non-resident person can be charged in the name of a representative. But such a person may be assessed in his own name (*i*).

The sur-tax is not collected or recovered before 1st January in the year following that for which it is assessed (*k*). Subject to very strict limitations, relief may be obtained where sur-tax has been paid in excess owing to a mistaken return (*l*).

The person assessed must be served with notice of assessment; notice of appeal must be given within twenty-eight days of such service; it must be given to the Special Commissioners in writing, and must specify the grounds of appeal (*m*).

The provisions for appeal in connection with sur-tax on the income of companies have already been indicated (*n*); against a decision of the Special Commissioners, for any assessment made in consequence thereof, on a question of sales or purchases *cum* dividend, and on an application to

(*f*) Act of 1927, s. 42 (7), *infra*, p. 601; the relevant income tax provisions are dealt with in Chaps. XVI.—XVIII.

(*g*) Sect. 42 (7) (a); see Chap. XII.

(*h*) *I. R.* v. *Longford; I. R.* v. *Pakenham*, [1928] A. C. 252; this decision appears to apply to sur-tax as to super-tax.

(*i*) *Whitney* v. *I. R.*, [1926] A. C. 37, *supra*, p. 339. As to returns, *vide infra*, p. 349.

(*k*) Act of 1927, s. 42 (1), *vide supra*, p. 601.

(*l*) Sect. 42 (3) of the Act of 1927 applies sect. 24 of the Act of 1923 (*vide infra*, p. 388) to sur-tax as a whole, and not merely to sur-tax on such income as is chargeable under Sched. D.

(*m*) Regulations 2, 5, *infra*, p. 617.

(*n*) *Supra*, pp. 331, 332.

spread income out over a period of more than one year, there is the same right of appeal to the Special Commissioners and the same right to require a case to be stated, as against an ordinary sur-tax assessment (*o*).

Returns, &c.

The return of total income from all sources which may be required from any individual by a particular notice (*p*) will often serve the purposes of sur-tax assessment; but there are further provisions for returns applicable to sur-tax only (*q*). It will, however, be more convenient to deal with these returns together in the next Chapter. It should, however, be noted here that any individual who is chargeable to sur-tax on his total income for any year, is bound under penalty to give notice to that effect to the Special Commissioners before the 30th September next following that year (*r*).

(*o*) Act of 1927, s. 36 (2), *infra*, p. 598; see pp. 336, 338, 339, *supra*, and Chap. XVII.

(*p*) Act of 1927, s. 43 (1), *infra*, p. 603.

(*q*) Sect. 44.

(*r*) Sect. 44 (1), (3); the year ends on 5th April.

CHAPTER XV.

RETURNS: PENALTIES: CLAIMS FOR ALLOWANCE OR DEDUCTION.

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Liability to make Returns.

For the purposes of income tax (*a*) various classes of persons are required to make returns (also called "statements, lists and declarations") of different kinds. The liability to make a return arises from the affixing of a general notice on the church door of the parish in which the person resides, who is required to make the return (*b*); or from the service of a particular notice on that person (*c*); in either case the return has to be made within the time limited in the notice. The liability to make returns of profits is not confined to persons whose own income is in question; it is imposed upon every person acting in any character on behalf of any person who by reason of incapacity or of non-residence in the United Kingdom cannot be personally charged (*d*); upon every person who in whatever capacity is in receipt of any money or value, or of any taxable profits, belonging to any

(*a*) The additional returns and notices required for sur-tax only are indicated *infra*, p. 349.

(*b*) Sects. 98, 100, *infra*, p. 425.

(*c*) Sects. 99, 100, *infra*, p. 425; sect. 109 (a), *infra*, p. 430. As to the method of service, see sect. 99 (2), sect. 220, *infra*, p. 467, and *Berry* v. *Farrow*, [1914] 1 K. B. 632, *supra*, p. 258; but a particular notice has now to be delivered by the surveyor of taxes, and the return made to him, except that a notice requiring a statement of annual value for Sched. A or B (see below) is still delivered by the assessor: Act of 1927, s. 43 (2), *infra*, p. 603. As to the assessor's duties, see Act of 1918, s. 108, as amended, *infra*, p. 429.

(*d*) Act of 1918, s. 101, *infra*, p. 426. Vicarious assessments in such cases are discussed *supra*, pp. 273 *sqq*.

other person who is chargeable in respect thereof, or would be so chargeable if he were resident and not incapacitated (*e*). The obligation imposed by sect. 103 applies to trustees and to executors (not being executors in the course of administration), and to a bank in whose name, or in the name of whose nominee, stock has been registered or inscribed either as security for a loan or an overdraft of the owner or a third party, or merely at the owner's request (*f*). The secretary of a company or the officer acting as treasurer, auditor, or receiver of any other body of persons, must make returns on behalf of the company or body (*g*). Any person may be required to give a list of every lodger and inmate in his dwelling-house (*h*). Employers may be required "by notice from an assessor" (*i*) to give lists of all their employees (including directors and managers of a company and weekly wage-earners); returns of payments made in respect of the employment must also be sent, except in the case of any employee whose yearly remuneration does not exceed 160*l*. and who is not employed in any other employment (*k*); a general notice (*l*) does not appear to be sufficient to oblige the employer to make such a return.

There are special provisions for a notice requiring a declaration or return from a person newly come into a parish (*m*).

A person who has two residences, or who carries on a trade or profession in different parishes, or in a parish other than the parish of his ordinary residence, may be

(*e*) Sect. 103, *infra*, p. 427. See also Sched. D, Cases I. and II. r. 16, *infra*, p. 506.

(*f*) *A.-G.* v. *National Provincial Bank, Ltd.* (1928), 44 T. L. R. 701.

(*g*) Sect. 106, *infra*, p. 428; see also sect. 105 (2). As to occupiers of land, *vide infra*, p. 347.

(*h*) Sect. 104, *infra*, p. 427.

(*i*) Or by a surveyor if the assessor fails to give notice: sect. 109 (a). As to service, see sect. 220, *infra*, p. 467.

(*k*) Sect. 105, *infra*, p. 428, as amended by Finance Act, 1925, s. 15 (4). See also Regulations as to weekly wage earners, Reg. 8, *infra*, p. 619; and Regulations made under sect. 32 of the Finance Act, 1921, with regard to superannuation funds, Reg. 11, *infra*, p. 623.

(*l*) See above.

(*m*) Sect. 102, *infra*, p. 426, and sect. 109, *infra*, p. 430.

called upon to make a return in each parish (*n*); and a person who occupies lands in different parishes must do so (*o*).

The "Schedules" that may be demanded by precept of the General or Special Commissioners are dealt with in connection with appeals (*p*).

A person chargeable under Schedule D, who desires to be assessed by the Special Commissioners, must give notice to the surveyor in making his return (*q*). But such a notice should not be given by any person who desires to contend that he is not liable to be charged under that Schedule (*r*).

Returns of Annual Value.

The return of annual value which has to be made by an occupier of lands to be charged under Schedule A or B, who is affected by a general notice, or is served with a particular notice by the assessor, must contain the statements of rent and annual value, or of annual value alone, and the other particulars, required by No. I. of the Fifth Schedule (*s*).

Returns of Profits: and of Total Income.

Every person chargeable, and every other person made liable as above described, who is affected by a general notice, or is served with a particular notice by the surveyor of taxes, must make a return of the profits or gains arising to him (or to the person in respect of whose income he is liable to make the return) from each and every source, that is, of the taxable income from that source; such a return does not include any interest or other annual payment arising out of

(*n*) Sched. D, Misc. Rules, r. 5, *infra*, p. 511; this rule probably applies to returns for all schedules: see sect. 208, *infra*, p. 464. See also "Place of Charge," *infra*, pp. 358 *sqq*.

(*o*) Sched. A, No. IX. r. 5, *infra*, p. 489. Rules 2, 3 and 4 of No. IX. appear to be rendered obsolete by sect. 28 of the Act of 1926, *infra*, p. 579.

(*p*) *Vide infra*, p. 380.

(*q*) Sect. 123, as amended, *vide infra*, p. 365.

(*r*) See per ATKIN, L.J., in *Avelino Aramayo & Co.* v. *Ogston*, [1925] 1 K. B. at p. 110.

(*s*) *Infra*, p. 524; see sect. 100 (1) (a) and sect. 207, *infra*, pp. 425, 464, and notes (*b*), (*o*), *supra*.

the property of any other person (*t*). And every person who is required to do so by a particular notice from the surveyor to make a return of income under Schedule D or E, must make the return whether he is chargeable or not (*u*).

The above provisions extend to "persons" of all kinds, including companies and other bodies, and it is under these that the returns are required which have long been familiar. In addition, there is a new power (*x*), by a particular notice served by the surveyor, to require any individual to furnish a return "of all the sources of his income and of the amount derived from each source for the year preceding the year of assessment." Although the words quoted are not unambiguous, it would seem that any source of income which the individual has ceased to possess before the beginning of the year of assessment need not be included in the return, whether income was derived from that source in the preceding year or not; for if a source of income is not possessed in the year of assessment, there is no tax leviable in respect of income derived from that source (*y*). But the income of the preceding year in respect of a source which *is possessed* in the year of assessment, even though no income is derived from it in the latter year, must clearly be included. The power to require such a return appears to apply to the representative of an individual who is incapacitated, non-resident or deceased (*z*).

The income is to be computed by reference to the year preceding the year of assessment, and not to any other year or period (*a*). The income is to be computed as for income

(*t*) Sect. 100 (1) (b), (3), as amended by Act of 1927, s. 43 (2), *infra*, p. 603; as to the persons liable, see above. The forms are now to be prescribed by the Commissioners of Inland Revenue: Act of 1927, s. 43 (3); but the General Declaration is prescribed by Act of 1918, 5th Sched. XV.; see also p. 354, note (*c*).

(*u*) Act of 1918, s. 100 (4), so amended, *infra*, pp. 426, 603; *Wall* v. *Cooper* (1929), 8 A. T. C. 336.

(*x*) Act of 1927, s. 43 (1), (2), *infra*, p. 603.

(*y*) *Vide supra*, p. 5, "The Income Tax Year." In any year to which an election made by him under sect. 17 of the Act of 1928 applies, the return made by a person chargeable to sur-tax is limited to Scheds. D and E: see note (*p*), *infra*, p. 350.

(*z*) *Vide supra*, notes (*d*), (*e*), (*f*); and see *I. R.* v. *Longford* (*Countess*), [1928] A. C. 252, *infra*.

(*a*) Sect. 43 (1), proviso.

tax; as regards annual value chargeable under Schedules A and B, income in respect of which tax is deducted at the source, and certain exceptional classes of income taxable under Schedule E (*b*), the statement will give the facts of the preceding year; with regard to other income, it will generally state the facts of the year next but one preceding (*c*).

In prescribing forms, the Commissioners are to aim at securing that no person shall have to make more than one return annually of his income and its sources (*d*).

Returns for purposes of Sur-Tax.

As appears from the provision last cited, the return of total income should ordinarily be sufficient for purposes of sur-tax. But in any case in which the particulars furnished in that or any other return are insufficient for this purpose, or where no return has been made, a notice may be served by the Special Commissioners, and the recipient must furnish a return, in the form and within the time required by the notice, of his total income, or of that of any incapacitated, non-resident or deceased person whom he represents (*e*); the return must be made whether that total income is, or is not, such as to give rise to a liability to sur-tax (*f*). Service of such a notice in a foreign country is good service, even if addressed to a non-resident alien (*g*). Moreover, any person who is chargeable to sur-tax must give notice to that effect before the 30th September next after the year for which he is chargeable (*h*). Penalties are provided in either case (*i*). The return, or the absence of one, is not binding on the Special Commissioners (*k*).

(*b*) Sect. 45 (1), proviso; see Chap. X. (*c*) See Chaps. III.—XI.

(*d*) Sect. 43 (3); see also 5th Sched. XV., *infra*, p. 524. And see the following paragraphs.

(*e*) See Chap. XI. A trustee must make the return so far as the facts are within his knowledge: *Brooke* v. *I. R.*, [1918] 1 K. B. 257, at p. 265, *supra*, p. 339; *I. R.* v. *Longford*, *supra*, [1928] A. C. at pp. 261, 268.

(*f*) Act of 1927, s. 44 (2), *infra*, p. 604.

(*g*) *Whitney* v. *I. R.*, [1926] A. C. 37.

(*h*) Sect. 44 (1), *infra*, p. 604; that is, the 30th September before the 1st January on which the tax will be payable: *vide supra*, p. 343.

(*i*) Sect. 44 (3), (4); as to limitation of time, see p. 352, *infra*.

(*k*) Sect. 44 (3).

These returns may be demanded in any year although no Act imposing the sur-tax for that year has yet been passed (*l*).

Any individual who has been required to make such a return of his total income may be required (under penalty) by the Special Commissioners to furnish further particulars, whether a sur-tax assessment has been made or not (*m*); this provision (unlike those above summarized) appears to apply only to the individual's own income, and not to that of any other individual whom he represents.

There is also a new provision by which an individual who is chargeable to sur-tax in any year may elect to make a return of his total income to the Special Commissioners by giving them notice on or before 1st May in the following year; such an election will continue in force until he has revoked it by notice (*n*). For any year of assessment for which the election is in force, he must make a return of total income in compliance with a notice from the Special Commissioners (*o*); and the return of total income made to the Inspector of Taxes will only include income chargeable under Schedule D or E (*p*). This provision, like that last mentioned, appears to apply only to a return made by an individual in his own behalf, and not in a representative capacity.

Penalties.

If no return is made, or the return made is unsatisfactory, the Revenue authorities may make the best assessment they can, either in the first instance (*q*) or by way of additional assessment (*r*) or of surcharge (*s*).

(*l*) Act of 1918, s. 210, *infra*, p. 464; *Bowles* v. *A.-G.*, [1912] 1 Ch. 123, *supra*, p. 322.

(*m*) Act of 1922, s. 22, *infra*, p. 552.

(*n*) Act of 1928, s. 17 (1), *infra*, p. 611; as to the effect of revocation, see proviso.

(*o*) Sect. 17 (2) (a); as to penalties and as to the effect of a return, see notes (*i*), (*k*), *supra*.

(*p*) Sect. 17 (2) (b); see preceding page.

(*q*) Act of 1918, ss. 107 (2), 112, 116, 121 (4); see Chap. XVI. As to sur-tax, see preceding paragraph.

(*r*) Sect. 125, *infra*, p. 434.

(*s*) Sect. 126, *infra*, p. 435.

But beyond this there are definite penalties provided in various enactments, some of which appear to cover the same ground in different ways; any attempt to reconcile them must be futile, and none has been made in any decided case. It seems to be for the Revenue authorities to elect under which of these provisions they will proceed.

First, for neglect or refusal to deliver a true and correct return within the time limited in a general or particular notice, or for wilful delay in delivering such a return, the penalty, whether proceedings are taken before any Court, or before the General Commissioners, is 20*l.*, together with treble the tax which the defaulter ought to be charged under the Act of 1918 (*t*); this means presumably treble the tax which he ought to be charged in respect of the source of income that should have been included in the return (*u*). These penalties are leviable where there has been mere neglect (*x*); the money penalty leviable where fraud is proved is no greater (*a*) (except in connection with a claim for any allowance or deduction) (*b*), but if any person makes a false statement or representation in a return he is also liable to six months' hard labour on summary conviction (*c*). The penalty for aiding or inducing another person to make a false or fraudulent return is 500*l.* (*d*).

A person required to make a return on behalf of another may obtain further time from the General Commissioners if he satisfies them that he is unable to deliver a perfect return within the time limited (*e*); but if the return has

(*t*) Sect. 107 (1) of the Act of 1918, as amended by sect. 23 (2) of the Act of 1923, *infra*, p. 429. As to the penalty imposed for non-delivery of a "schedule," *vide infra*, p. 380.

(*u*) Contrast the language of sect. 30 of the Act of 1918, *infra*, p. 412.

(*x*) *A.-G.* v. *Till*, [1910] A. C. 50. Sect. 107 of the Act of 1918 makes clear what sect. 55 of the Act of 1842 did not, that the penalty applies although a return has been delivered, if it is not correct; but the incorrectness or non-delivery must be due to neglect or wilful refusal.

(*a*) Sect. 132 (1) (b), *infra*, p. 438; sect. 146 (1), *infra*, p. 445. As to sur-tax, see Act of 1927, s. 44 (3), *infra*, p. 604.

(*b*) Act of 1918, s. 30, *vide infra*, p. 353.

(*c*) Sect. 227, *infra*, p. 469. See also Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 5 (b).

(*d*) Act of 1918, s. 132 (2), *infra*, p. 438, as amended by sect. 23 (3) of the Act of 1923, *infra*, p. 564.

(*e*) Sect. 107 (3), *infra*, p. 429.

to be made on a person's own behalf he can only obtain an extension if he has delivered the best return he can within the time limited (*f*). Persons exempt from tax and, in general, those chargeable in public departments are not liable to penalties (*g*).

In respect of a list of employees to be delivered by a company or other body corporate, the company or body is liable to a penalty as well as the secretary (*h*).

There is a penalty of 100*l*. for neglect or refusal to deliver an account under General Rule 21 in respect of payments not payable out of profits or gains brought into charge (*i*).

Provisions as to proceedings for recovery are contained in sects. 221—223 (*j*). The Commissioners of Inland Revenue have discretion to mitigate penalties and to stay proceedings (*k*); but the Courts have no discretion to vary the amount of the penalty (*l*).

Proceedings for the recovery of any fine or penalty in connection with income tax or sur-tax may be commenced at any time within six years after the date when it was incurred (*m*).

Rectification of Returns.

Where a person has delivered a return and discovers an omission or wrong statement therein, he may rectify it by delivering an additional return "and shall not thereafter be liable to any proceeding by reason of his omission or wrong statement" (*n*); where a person has not delivered a return within the time limited (*o*), he may deliver it at any time before proceedings have been commenced for recovery of a penalty for such non-delivery, "and thereafter no such proceedings shall be taken" (*p*). It is not clear whether

(*f*) Sect. 140 (4), *infra*, p. 443.
(*g*) Sect. 107 (4).
(*h*) Sect. 105 (4), *infra*, p. 428.
(*i*) Rule 21 (2A), *supra*, p. 193.
(*j*) *Infra*, pp. 468, 469. See also Inland Revenue Act, 1890 (53 & 54 Vict. c. 21), s. 21, which applies to proceedings under "any Act relating to inland revenue."
(*k*) Sect. 222 (1), *infra*, p. 468.
(*l*) *L.-A.* v. *McLaren*, *infra*, p. 355.
(*m*) Act of 1923, s. 23 (1), *infra*, p. 564.
(*n*) Act of 1918, s. 140 (1), *infra*, p. 442.
(*o*) *Vide supra*, p. 345.
(*p*) Sect. 140 (2).

in the former case, the additional return can be delivered even after proceedings have been commenced, so as to cause such proceedings to fail (*q*). But in a case of non-delivery, even if proceedings have been commenced, they may be stayed if the General Commissioners are satisfied that no fraud or evasion was intended (*r*).

If an imperfect return has been delivered and the General Commissioners are satisfied that there is a sufficient reason for this, they may extend the time for delivery (*s*).

These provisions apply to schedules (*t*) as well as to returns.

Where a notice of surcharge (*u*) is given, the person receiving it may within ten days deliver a true return whether he has previously delivered any return or not, and if the surveyor is satisfied with it and with his explanation the person will be charged in "single rate of tax" only (*x*).

A person who has paid excessive tax under Schedule D, or Schedule E, by reason of mistake in the return made by him for the purposes of the assessment may obtain relief from income tax and any consequential relief from sur-tax (*y*); this matter is considered in connection with claims for repayment (*z*).

Claim for Relief by Deduction or Repayment.

A claim for any relief given by way of deduction of tax and described in Chapter I. (*a*) is delivered to the surveyor in a form directed by the Commissioners of Inland

(*q*) In *A.-G.* v. *Till, supra,* [1910] A. C. at p. 64, Lord GORELL says that both non-delivery and delivery of an incorrect statement may be remedied both before and after proceedings have been commenced; while Lord SHAW, at p. 68, says "it is admitted" that where an incorrect statement has been delivered, sect. 129 of the Act of 1842 (now sect. 140 of the Act of 1918) "cannot be invoked" after proceedings have been commenced.

(*r*) Sect. 140 (3); this sub-section speaks of "proceedings for recovery of any such penalty," and cannot therefore apply to the case dealt with in sub-sect. (1) which speaks of "any proceeding"; but the discretion given to the Commissioners of Inland Revenue by sect. 222 appears to supply the omission.

(*s*) Sect. 140 (4).

(*t*) *Vide infra,* p. 380.

(*u*) *Vide infra,* p. 370.

(*x*) Sect. 127, *infra,* p. 436.

(*y*) Act of 1923, s. 24, *infra,* p. 564; Act of 1927, s. 42 (3), *infra,* p. 601.

(*z*) *Vide infra,* p. 370.

(*a*) See pp. 11, 15, and Act of 1927, s. 40, *infra,* p. 599.

Revenue (*b*). There is also provision for a return of total income in this connection (*c*); the contents of this return are discussed in Chapter XIII. Where necessary, it is to be delivered within the time limited for the delivery of returns (*d*), unless the General Commissioners for any special reason allow further time. Where one person is assessable on behalf of another (*e*) he may make such a claim on behalf of that other (*f*).

If the surveyor does not object to the claim within a certain time (*g*) the General Commissioners for the division in which the claimant resides (*h*) may allow the claim; if, on the other hand, the surveyor objects in writing they are to hear the claim by way of appeal (*i*).

The above provisions appear to apply to claims made both before and after assessment (*k*) as well as to claims for repayment where the tax has already been paid by deduction or otherwise. In allowing claims for repayment the General Commissioners are to send a certificate to the Special Commissioners, and the latter issue the actual order for repayment (*l*).

(*b*) Sect. 41 (1).

(*c*) Act of 1918, s. 27, *infra*, p. 411; 5th Sched. No. XVII., *infra*, p. 524; Finance Act, 1920, s. 17, *infra*, p. 529. These enactments are still in force, subject to the provisions of sect. 41 of the Act of 1927: see sub-sect. (3), *infra*, p. 600. The return of total income furnished in compliance with a notice given under sect. 43 (1) (*vide supra*, p. 348) should, however, be sufficient for the purpose. As regards relief in respect of insurance premiums, &c., the earlier provisions appear to be unaffected by sect. 41 of the Act of 1927; and as to Dominion tax, see p. 25, *supra*.

(*d*) *Vide supra*, p. 345.

(*e*) *Vide supra*, pp. 273 *sqq*.

(*f*) Act of 1918, s. 28 (5), *infra*, p. 412; see also sub-sect. (4). And see note (*c*), *supra*.

(*g*) Sect. 27 (3).

(*h*) Sect. 28 (1); see, however, sub-sect. (2).

(*i*) Act of 1918, s. 27 (5), *infra*, p. 411; Act of 1927, s. 41 (2), (3), *infra*, p. 600; a case may be stated. For the procedure in appeals, see Chap. XVII.; and as to the appeal on a question of the claimant's status, preserved by sect. 41 (3), see p. 375, *infra*.

(*k*) See per COZENS-HARDY, M.R., in *Brooks* v. *I. R.*, [1914] 1 K. B. at p. 585. As to claims where husband and wife are separately assessed, see Finance Act, 1920, s. 25 (1) (d), *infra*, p. 534.

(*l*) Act of 1918, s. 29, *infra*, p. 412. Claims for repayment in connection with relief of other kinds than the allowances and deductions here referred to are dealt with in Chap. XVII.

Penalties in connection with Claims.

The penalty for fraud of any kind by the claimant at any stage of these proceedings is 20*l.*, and treble the tax "chargeable in respect of all the sources of his income and as if such claim had not been allowed" (*m*), that is to say, "the penalty is not to be measured by anything [the claimant] has done in returning his income or by what has followed on this return, but by the income itself, the total income for the year of charge," including any income on which tax has already been paid (*n*). The offence of untruly declaring any income, &c. is confined to a false or untruthful declaration; mere inaccuracy is not sufficient (*o*). The penalty for aiding and abetting is 500*l.* (*p*).

A person who knowingly makes a false statement or representation for the purpose of obtaining any allowance, reduction or repayment, for himself or another, is liable on summary conviction to six months' hard labour (*q*).

(*m*) Sect. 30; as to recovery and mitigation of penalties, *vide supra,* p. 352.

(*n*) *L.-A.* v. *McLaren* (1905), 7 F. 984; 5 Tax C. 110, see per Lord KINNEAR at p. 115.

(*o*) *Ibid.,* per Lord KINNEAR at p. 114; contrast the language of sect. 30 with that of sect. 107, *supra,* p. 351.

(*p*) Sect. 30 (2) of the Act of 1918, *infra,* p. 412, as amended by sect. 23 (3) of the Act of 1923, *infra,* p. 564.

(*q*) Act of 1918, s. 227, *infra,* p. 469. See also Perjury Act, 1911, s. 5 (b).

CHAPTER XVI.

MACHINERY OF ASSESSMENT.

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Authorities and Officials.

For a comprehensive account of the administration of the income tax, the reader is referred to the report of the Royal Commission (*a*). As there stated, the system in many of its practical developments still lacks legal sanction (*b*); and any account that might be attempted here must either be drawn wholly from the Income Tax Act, 1918, and therefore be incomplete; or it must merely repeat what appears in that report. Accordingly, only a very brief statement will here be made of the names and nature of the various authorities, which are somewhat confusing (*c*). Their statutory powers and duties so far as they affect the persons charged with tax, will be considered in connection with assessment, appeal, collection and so forth.

The chief of these authorities, then, is the Board described in the Income Tax Acts as the Commissioners of Inland Revenue, whose seat is at Somerset House, and who have the care and management of the income tax throughout the United Kingdom (*d*).

(*a*) Part IV., sects. I.—IX.; *vide supra*, p. 3, note (*i*).
(*b*) See para. 331.
(*c*) It is based on the sections of the report above referred to.
(*d*) Act of 1918, s. 57.

Bodies of General Commissioners are appointed for different Divisions covering the whole of England, Scotland and Wales (*e*), and are "theoretically responsible in their respective Divisions for the assessment and collection of the tax" (*f*). Their chief importance from the taxpayers' point of view, is that assessments have to be signed and allowed by them, and that they hear all appeals against assessments, except in certain cases where the person charged may choose to be assessed by the Special Commissioners, or to appeal to them.

The Special Commissioners (*g*) are a body of whole-time officials, whose functions extend over the whole country; they have an office in London, but they also sit elsewhere as occasion demands. They make, and hear appeals against, assessments under Schedule D at the request of any taxpayer; they assess income tax on railways and on foreign and Colonial dividends paid in this country; and they assess, collect, and hear appeals against, sur-tax.

Bodies of Additional Commissioners (*h*) are appointed for most of the Divisions by the General Commissioners; they are unpaid. Their duty is to perform certain preliminary work in connection with Schedule D assessments, before these are sent up to the General Commissioners, who decide upon them.

Inspectors or Surveyors of Taxes (*i*) are permanent officials acting under the orders of the Commissioners of Inland Revenue. The terms "inspector" and "surveyor" are interchangeable; but as, in the sections of the Act which lay down the powers and duties of these officers in relation to persons chargeable they are generally described as "surveyors," that name is used in the ensuing chapters. These statutory powers and duties are many and various; for instance, the inspector or surveyor has a voice in the making of assessments before they are signed and allowed,

(*e*) Sects. 58, 59; the Divisions correspond roughly with the old Land Tax Divisions, Report, para. 339.

(*f*) Para. 338.

(*g*) Sect. 67.

(*h*) Sect. 61.

(*i*) Sect. 75.

appears on appeals, makes all assessments with regard to weekly wage-earners, and initiates action with regard to additional assessments and surcharges. In practice, he is no doubt usually appointed to act for a particular district; but he does not appear to be confined in the exercise of his powers to the district for which he is appointed (*k*).

Assessors are appointed annually for each parish by the General Commissioners of the Division (*l*). They issue forms of return and exercise various preliminary functions with regard to assessments under Schedules A, B, D and E.

Collectors (*m*) are appointed annually for each parish, some by the General Commissioners and some by the Commissioners of Inland Revenue. Their duties as collectors are confined to the collection of the tax; but the collector is often in fact the same person as the assessor.

Place of Charge: Schedule A.

The areas of jurisdiction of the various authorities dealing with assessment have been indicated above. Under Schedule A, with certain specific exceptions, the tax is assessed and charged upon all properties in the parish in which they are situate (*n*); and outside the County of London (*o*) the occupier must (under penalty) return statements for each parish in which the land is situate, whether he resides there or not, giving separate estimates of value for land belonging to different owners (*p*). If a dwelling-house with any premises occupied therewith is situate in more than one parish, it may be assessed in any one of them at the discretion of the surveyor (*q*). Outside the County of London (*r*), lands held under one demise, or occupied by the same person as owner, extending into different parishes in the same Division, may be assessed at the

(*k*) Cf. *R.* v. *Southampton Commrs.*, *infra*, p. 365, [1916] 2 K. B., pp. 260, 261; this point did not arise in the C. A., where the decision was reversed on another ground.

(*l*) Sects. 76, *sqq.*

(*m*) Sects. 80, *sqq.*

(*n*) Sched. A, No. IX. r. 1, *infra*, p. 489.

(*o*) *Vide supra*, p. 47.

(*p*) Rule 5, *supra*, p. 347.

(*q*) Rule 8.

(*r*) *Vide supra*, p. 47.

discretion of the Commissioners in either parish (*s*); if the lands extend into more than one Division, they are to be assessed in the Division where the occupier resides.

Place of Charge: Schedule D.

One of the miscellaneous rules (*t*) of Schedule D contains directions as to the place of charge of various classes of persons in various contingencies. There is nothing in the language of the rule to confine its operation to the tax charged under Schedule D; but as separate provision is made under Schedules A (*u*) and E (*x*), and as tax under Schedule C is deducted at the source (*y*), this would appear to be the intention.

Under this rule (*z*), then, every person who "ordinarily resides" in any parish is chargeable in that parish, but there may also be an alternative place of charge; if he has more than one place of ordinary residence (and is not engaged in a trade or profession) (*a*), he is chargeable at either place; if he has none, he is chargeable at the place where he resides at the time of the issue of the general notices (*b*), or at the first place where he comes to reside after that time. The rule does not justify the charging of a person in a parish where he owns a house in which he has not lived for some years, but which has always been either let furnished or to be let (*c*).

As alternatives to assessment at the place of ordinary residence, a householder (if he is not engaged in a trade

(*s*) Rule 6.

(*t*) Misc. Rules, r. 4, *infra*, p. 510, takes the place of sects. 106 and 108 of the Act of 1842, and is free from some of the defects which gave rise to the difficulties in *R.* v. *Kensington Commrs., Ex parte Aramayo,* [1916] 1 A. C. 215, and *R.* v. *Southampton Commrs.*, [1917] 1 K. B. 259, *infra*, p. 365.

(*u*) *Vide supra*, pp. 358, 69, as to Schedules A and B.

(*x*) *Vide supra*, p. 258.

(*y*) *Vide supra*, p. 76.

(*z*) See note (*t*), *supra*.

(*a*) Rule 4 (3). The reason for the insertion of the words here included in brackets is not clear.

(*b*) *Vide supra*, p. 345.

(*c*) *R.* v. *Aldrington Commrs.* (1916), 85 L. J. K. B. 1753, *infra*, p. 377. The effect of the phrase "ordinarily resident" in connection with foreign possessions is considered *supra*, pp. 222, 269.

or profession) may be assessed in the parish in which his dwelling-house is situate although he does not ordinarily reside there (*d*); and a person carrying on a trade or profession or more than one trade or profession may be assessed in the parish where each is carried on (*e*), even though it is only in part carried on in the United Kingdom; but if the trade is carried on by manufacture he is assessable at the place of manufacture, although the goods are sold elsewhere (*f*).

In no case does a subsequent removal invalidate an assessment already made (*g*).

Particulars enabling the authorities to fix the place of charge must be given in any income tax return (*h*).

The provision of alternative places of charge does not entitle the authorities to charge any person with tax upon the same income in more than one place; but a person who has two residences, or carries on a trade or profession in different parishes, or in a parish other than that of his ordinary residence, may be called upon to make returns in each place (*i*).

The above rules are now applicable to income formerly charged under No. II. (*k*) or No. III. (*l*) of Schedule A, and now charged under Schedule D (*m*). Railways are assessed by the Special Commissioners (*n*).

Place of Charge: Schedule E.

Under Schedule E there are special provisions for assessing officers of the Crown, and of departments (*p*), and officers of railway companies (*q*); but any person

(*d*) Sched. D, Misc. Rules, r. 4 (2).

(*e*) See Cases I. and II. r. 16, proviso, *supra*, p. 346.

(*f*) Misc. Rules, r. 4 (1); in the second limb of the Rule the words "within the United Kingdom" appear to mean "wholly or in part within . . .," although this is not expressed as in the first limb.

(*g*) Rule 4 (6).

(*h*) Rule 4 (7).

(*i*) Rule 5, *supra*, p. 346.

(*k*) *Supra*, p. 175.

(*l*) *Supra*, p. 78.

(*m*) Act of 1926, s. 28, *infra*, p. 579.

(*n*) Act of 1918, s. 124, *infra*, p. 434.

(*p*) Sched. E, rr. 11, 18; see *Pickles* v. *Foster*, *supra*, p. 258.

(*q*) Rule 7, *supra*, p. 259; Act of 1927, s. 45 (7), *infra*, p. 606.

chargeable under that Schedule (*r*) may also be assessed and charged in any parish in which he ordinarily resides or in which he is employed (*s*).

Assessment: Duties of Assessor.

The obligation to make returns, and the notices which make that obligation effective, have been dealt with in Chapter XV. The assessor delivers the returns received to the General Commissioners, together with certain lists (*t*), except where the return is made by a person chargeable under Schedule D, and is accompanied by a request for assessment by the Special Commissioners (*u*).

If the assessor has not received a return (*x*) from any person liable, he is, to the best of his information and judgment, to make an assessment upon him under Schedule A, B, or E, if the liability arises under one of them; or if the liability arises under Schedule D, to estimate the profits assessable, and give the person's name and address and other particulars to the Additional Commissioners (*y*).

When a return has been delivered, the assessor is not bound to accept it as correct, as far as Schedules A and B are concerned; for the assessments under these Schedules are to contain the "full and just annual values" (*z*) of the lands, as well as the names of the occupiers and proprietors (*a*). And where no estimate of annual value has been received from the occupier of any lands, or the General Commissioners are not satisfied with it, they may, by a signed order to the assessor or surveyor, authorise him to view the lands with a person of skill named in the order (*b*).

Assessors are to deliver their certificates of assessments under Schedules A, B, and E to the General Commissioners, verified on oath (*c*).

(*r*) See Chap. X.
(*t*) Sect. 113, *infra*, p. 430.
(*x*) Sect. 112; see also sect. 107 (2).
(*z*) See Chap. II.
(*b*) Sect. 116.
(*s*) Rule 18 (5), *infra*, p. 517.
(*u*) *Vide infra*, p. 365.
(*y*) Sect. 121.
(*a*) Sect. 110.
(*c*) Sect. 113; the Act does not say whether the assessor is bound to accept as correct returns of profits chargeable under Sched. E.

Assessments under Schedules A, B, and E.

The surveyor may examine the assessments made by the assessor under Schedules A, B, and E (*d*). After he has examined them, the General Commissioners are to take them into consideration; if the surveyor does not object to them, and the General Commissioners are satisfied that they are correct, they shall sign and allow the assessments; if he objects to any of the assessments, and suggests in writing any error, mistake, omission or fraud, they are to the best of their judgment to rectify it (*e*) and to sign and allow it as rectified (*f*). The surveyor may also in certain circumstances amend (by way of increase) the assessment made by the assessor, before it is signed and allowed; but not more than six years after the year to which the assessment relates (*g*).

When an assessment has been signed and allowed, it cannot be altered except upon appeal (*h*).

As soon as the assessment has been signed and allowed, notice thereof must be given by the General Commissioners, either by delivering a copy of the assessment to the assessor for inspection by the persons assessed, with a notice of the day of appeal to be affixed at the church door or other public place; or by delivering to each person assessed a notice of the amount of his assessment and of the day of appeal (*i*). The assessment does not become binding so as to impose a charge until it has been signed

(*d*) Further observations as to assessments under Sched. E will be found in Chap. X., pp. 257—259.

(*e*) Sect. 120.

(*f*) It is perhaps permissible to read this into the section, as well as a power to overrule the objection if it is not shown that any rectification is required.

(*g*) Sect. 125 (1) (i) (a), as amended by Act of 1923, s. 29 (1), *infra*, pp. 434, 567; the General Commissioners are not bound to accept the amendment. In the case of a deceased person, the amendment must be made within three years after the year of assessment in which he died: Act of 1923, s. 29 (3).

(*h*) Act of 1918, s. 133 (1), *infra*, p. 439.

(*i*) Sect. 134 (1) (2), *infra*, p. 439; this provision is applied to Sched. E assessments by sect. 208, which takes the place of sect. 188 of the Act of 1842: *Berry* v. *Farrow*, [1914] 1 K. B. 632, *infra*, p. 368. Sect. 55 and sect. 57 (3) of the Taxes Management Act, 1880, there referred to are replaced by sect. 216 (2) and sect. 136 (1) of the Act of 1918.

and allowed, and until notice has been duly given and the time for appealing has expired, and any appeal brought has been determined (*k*). It may be doubted whether it can become binding unless a notice has been delivered (*l*) to the person assessed; the delivery of a copy to the assessor, who is not even required to inform the persons assessed where it can be inspected, can hardly have that effect (*m*).

Owing to the long interval which had elapsed since the assessments for Schedule A (other than those of concerns charged under No. III.) were last revised, the Finance Act, 1922, provided for the annual values to be determined in the year 1922—1923, and for effect to be given to them in 1923—1924, and applied the above procedure with the necessary adjustments (*n*).

Appeals are dealt with in Chapter XVII.

Assessments under Schedule D.

Any person chargeable under Schedule D may at his own option be assessed by the Special Commissioners; if he desires this he must give notice to the assessor in making his return (*o*).

Apart from cases in which this option is exercised, the returns and the assessor's estimates (*p*) where no return has been received, are to be laid before the Additional Commissioners (*q*), who are to consider them after they have been examined by the surveyor (*r*). If they are satisfied with the return and the surveyor makes no objection to it, they are to direct an assessment to be made in accordance

(*k*) *Berry* v. *Farrow;* and cf. *R.* v. *Southampton Commrs.*, *infra*, p. 369.

(*l*) As to the method of delivery, see sect. 220 (4), *infra*, p. 467.

(*m*) The proviso to sect. 216 (2), *infra*, supports this view. It is not a notice of the assessment, but a notice of the day of appeal, that is to be affixed at the church door under sect. 134 (2) (a). *Berry* v. *Farrow* does not decide the point, because there no notice of any kind had been given; it was unsuccessfully contended that none was necessary.

(*n*) Act of 1922, ss. 32, 33, and Second Sched.: *infra*, pp. 555, 559. As to the extended right of appeal, *vide infra*, p. 373, note (*b*). The assessment then made is still in force: see Act of 1929, s. 1 (3), *infra*, p. 615.

(*o*) Sect. 123, *infra*, p. 434. (*p*) Sect. 112 (b), *vide supra*, pp. 345, 361.

(*q*) Sect. 121 (1). (*r*) Sect. 121 (2).

with the return; but the surveyor, if he is dissatisfied with their determination (although he made no previous objection) can require the Additional Commissioners to state a case for the opinion of the General Commissioners (*s*). If no return, or an unsatisfactory return, has been delivered, or if the surveyor makes an objection in writing, the Additional Commissioners are to make an assessment according to their own judgment (*t*). They may refer any return to the General Commissioners without making an assessment (*u*), and the surveyor can ask for an amendment of any assessment made by the Additional Commissioners, at any time before it leaves their hands (*x*). If, when an assessment has been made by them, the surveyor makes an objection in writing, they are to certify it, with their reasons for making the assessment, to the General Commissioners (*y*); and the surveyor must give notice to the person assessed so that he may appear before the General Commissioners (*z*).

As the proceedings described in sect. 121 are from time to time completed, the assessments are entered in books, signed by the Additional Commissioners, and delivered to the General Commissioners; notice of such delivery is to be given to the surveyor; and when fourteen days have expired after the surveyor has had such notice, a notice of assessment is to be given to the person assessed (*a*). The person assessed is entitled to appeal within twenty-one days of the date of the notice of assessment (*b*); and a general notice limiting a reasonable time for hearing appeals is to be given by being fixed up in the General Commissioners' office, or left with their clerk, and also affixed to the church door (*c*).

(*s*) Sect. 121 (3).

(*t*) Sect. 121 (4); see also sect. 107 (2).

(*u*) Sect. 121 (5).

(*x*) Sect. 121 (6).

(*y*) Sect. 121 (7); it is difficult to read this provision with that for requiring the Additional Commissioners to state a case contained in sub-sect. (3), proviso (i), (ii).

(*z*) Sect. 121 (8); as to service, see sect. 220 (5), *infra*, p. 467.

(*a*) Sect. 122, *infra*, p. 433; cf. *Berry* v. *Farrow*, *supra*, p. 362; as to the method of serving a notice of assessment, see sect. 220 (4), *infra*, p. 467.

(*b*) Sect. 136 (1), *vide infra*, p. 377.

(*c*) Sect. 134 (3).

After the time for hearing appeals has expired, the assessments are to be signed and allowed by the General Commissioners (*d*) although an appeal against the assessment may have been postponed or adjourned beyond that time (*e*). Until this has been done, the taxpayer is not charged, and there is no liability upon him (*ee*). "The acts of the assessors and Additional Commissioners are no more than subordinate and preliminary. . . . The assessments have no operation until they have been signed and allowed by the General Commissioners" (*f*).

Appeals are dealt with in Chapter XVII.

Assessment under Schedule D by the Special Commissioners.

Where a person chargeable has given notice in his return that he requires to be assessed by the Special Commissioners (*g*), the assessor forwards the return to the surveyor; and he, after examining the return, is to make an assessment to the best of his judgment, and forward it to the Special Commissioners, who after examining it shall sign and allow such an assessment as appears to them just and proper (*h*). The assessor merely forwards the request and the return to the surveyor, and there are no proceedings before either the Additional or the General Commissioners. An appeal lies against such an assessment to the Special Commissioners themselves (*i*); and the liability arises only when the assessment has been signed and allowed, the time for appeals has expired, or an appeal brought has been determined, and the Special Commissioners have notified the person charged of the amount of the charge (*k*).

(*d*) Sect. 122 (3).

(*e*) Act of 1926, s. 25 (2), *infra*, p. 578; in this case only that part of the tax which is undisputed is to be collected, pending determination of the appeal: proviso (i). As to appeals, see Chap. XVII.

(*ee*) *R.* v. *Southampton Commrs.*, [1917] 1 K. B. 259, *infra*, p. 369; and cf. *Berry* v. *Farrow*, *supra*, p. 362.

(*f*) *Kensington Commrs.* v. *Aramayo*, [1916] 1 A. C. 215, per Lord WRENBURY at p. 227.

(*g*) *Vide supra*, p. 347.

(*h*) Sect. 123 (1), (2), *infra*, p. 434.

(*i*) *Vide infra*, p. 374.

(*k*) Sect. 123 (3); the provisions of sect. 25 (2) of the Act of 1926, as to signing and allowance pending the determination of an appeal (see note (*e*), and p. 363, note (*k*)), do not appear to apply to an assessment made by the Special Commissioners.

Railway Assessments.

Assessments on a railway company are made by the Special Commissioners (*l*), both in respect of its own profits (*m*), and in respect of offices and employments held under it, and pensions paid by it (*n*).

Assessment under General Rule 21.

Where any interest, annuity, or other annual payment taxable under Schedule D, or any royalty or other sum paid in respect of the user of a patent, is not wholly payable out of profits or gains brought into charge, the payer is bound to deduct tax in making the payment (*o*), and a similar obligation is imposed on a person who pays royalties or periodical sums in respect of certain copyrights (*p*). The person by or through whom the payment of the interest, royalty, &c. was made is to deliver an account to the Commissioners of Inland Revenue; and he is to be assessed by the Special Commissioners in respect of the payment made, so far as it is not "made out of profits or gains brought into charge." There is a penalty of 100*l*. for neglect or refusal to deliver such an account. If no account is delivered, or if the Special Commissioners are not satisfied with the account delivered, they may make an assessment according to the best of their judgment (*q*).

(*l*) Sect. 124, *infra*, p. 434.

(*m*) Now taxable under Case I. of Sched. D; *vide supra*, pp. 34, 159. As to returns, *vide supra*, p. 346.

(*n*) Sched. E, r. 7, *infra*, p. 514, is now to be read subject to sect. 18 (3) of the Act of 1922 and sect. 45 of the Act of 1927, *vide supra*, p. 259; but the half-yearly assessment and collection in the case of weekly wage-earners employed by way of manual labour are carried out as indicated *infra*, p. 367.

(*o*) General Rule 21 (1), *vide supra*, p. 193.

(*p*) Act of 1927, s. 25, *vide supra*, p. 206.

(*q*) General Rule 21, paras. (2), (2A), (2B), *infra*, p. 522, substituted by Act of 1927, s. 26, so as to get rid of the effect of the decision in *In re Lang Propeller, Ltd.*, [1927] 1 Ch. 120. The provisions for appeals, additional assessments, and so on, apply under these paragraphs as to any assessment under Sched. D which the Special Commissioners have power to make: Rule 21 (2B). The new provisions of Rule 21 are retrospective: see Act of 1927, s. 26 (2), *infra*, p. 590.

Weekly Wage-Earners.

Where weekly wage-earners are employed by way of manual labour, they are assessed half-yearly in respect of the wages of that employment (*r*). The assessment is made by the surveyor without the intervention of any other body or person; he has to serve a notice of assessment on the person assessed, who may first object, and if he is unable to agree with the surveyor, appeal to the General Commissioners; any reliefs are to be allowed and deducted half-yearly (*s*).

Errors in Assessments: Double Assessment.

Errors of form are not to invalidate "assessments" or "charges"; provided that a notice of charge (*t*) has been duly served on the person intended to be charged, and that that notice contains in substance and effect the particulars on which the charge is made (*tt*).

But if a person has, either on his own account or on another's, been assessed twice over for the same year for the same cause and on the same account, he may apply to the General Commissioners for the Division where the second assessment was made, and have it vacated; there is no limit of time for making the application; the Commissioners of Inland Revenue have a similar power to that of the General Commissioners; and if it is proved to the Commissioners of Inland Revenue that payment has been made on both assessments, they shall order repayment (*u*).

(*r*) *Vide supra,* p. 255; and see note (*n*).

(*s*) Regulations dated July 16, 1925, *infra,* pp. 618—621; see Act of 1925, s. 18, *infra,* p. 573; Act of 1927, s. 45 (1), proviso (c), *infra,* p. 605. As to additional assessments, *vide infra,* p. 369.

(*t*) As to service of notice of assessment or "charge," *vide supra,* pp. 362, 364.

(*tt*) Sect. 216, *infra,* p. 466. The section presents great difficulties; as to the various meanings of "assessment" and "charge" in these Acts, see *Kensington Commrs.* v. *Aramayo, supra,* p. 8, per Lord WRENBURY, [1916] 1 A. C. at p. 227. The writer is unable to suggest what is meant by "hearing and determining" a charge.

(*u*) Sect. 151, *infra,* p. 447. As to error due to a mistaken return, *vide infra,* p. 388.

Additional First Assessments.

If the surveyor "discovers" that in the assessments thus made any properties or profits chargeable to tax have been omitted, that any person has not been assessed, or has been undercharged, or has obtained any unauthorised allowance, deduction or relief, or that any person has not made a return, or has not made a full return, an "additional first assessment" may be made (*v*). Legal evidence of any of these matters is not necessary as a preliminary; but there must be information before the surveyor "which would enable him, acting honestly, to come to the conclusion" that such a state of facts exists (*w*). The question of legal proof only arises if and when the additional assessment becomes the subject of appeal.

Where the discovery is made after the first assessments have been signed and allowed (*x*), the surveyor certifies the particulars (where the tax is chargeable under Schedule A, B, or E) to the General Commissioners, who then (it appears) have jurisdiction to determine the facts after considering the particulars certified to them, and to sign and allow such an additional first assessment as they find to be correct (*y*). Such an additional assessment is subject to appeal (*z*), as in the case of a first assessment; and the liability is imposed at the same time as in that case (*a*).

Where the tax is chargeable under Schedule D (*b*), the Additional Commissioners (*c*) "shall make . . . . an addi-

(*v*) Sect. 125, *infra*, p. 434.

(*w*) *R.* v. *Bloomsbury Commrs.*, [1915] 3 K. B. 768, *infra*, p. 376, following the decision of the K. B. D. on this point in *R.* v. *Kensington Commrs.*, [1913] 3 K. B. 870.

(*x*) If they have not been signed and allowed, the surveyor may himself amend them, *vide supra*, p. 362.

(*y*) Sect. 125 (1) (i) (b); see *R.* v. *Bloomsbury Commrs.*, per Lord READING, L.C.J., [1915] 3 K. B. at p. 782.

(*z*) See Chap. XVII. If there are facts which warrant enquiry by the General Commissioners, the Court will not, by prohibition, prevent them from making an additional assessment: *R.* v. *Marylebone Commrs.*, *Ex parte Schlesinger* (1928), 13 Tax C. 746. The remedy is by appeal against the assessment.

(*a*) *Berry* v. *Farrow*, [1914] 1 K. B. 632, *supra*, p. 362.

(*b*) Sect. 125 (1) (ii).

(*c*) Moved thereto, of course, by the surveyor; but this is not expressed here as in the previous paragraph.

tional first assessment . . . . in such a sum as according to their judgment ought to be charged." Such assessment is subject to objection by the surveyor (*d*) and to appeal (*e*). The additional first assessment having been made by the Additional Commissioners, requires to be signed and allowed by the General Commissioners in the same way as a first assessment, and the liability is imposed at the same time as in that case (*f*); the General Commissioners have jurisdiction to determine the facts (*g*).

An additional first assessment may be made not later than six years after the end of the year for which the charge ought to have been made (*g*). It is sufficient under Schedule D if the assessment is made by the Additional Commissioners within the time limited; notice need not be given to the person assessed within that time, nor need the assessment be signed and allowed by the General Commissioners within the six years (*h*). Under Schedules A, B and E, however, the person charged does not receive notice of assessment until after signing and allowance (*i*), and it is submitted that under these Schedules, not only must the additional first assessment have been signed and allowed within the six years, but notice must have been given to the person charged.

Additional assessments under Schedules D and E are also authorized in certain specific cases under recent Acts, and the above provisions will apply according to the Schedule under which they are made. Such assessments may become necessary under Schedule D on the permanent discontinuance of a trade (*j*), on a decision by the Commissioners of Inland

(*d*) See sect. 121 (7), and p. 364, *supra*.

(*e*) *R.* v. *Southampton Commrs.*, [1917] 1 K. B. 259, *supra*, p. 365.

(*f*) See *R.* v. *Bloomsbury Commrs.*, per Lord READING, L.C.J., [1915] 3 K. B. at p. 782.

(*g*) Act of 1918, s. 125 (2), as amended by Act of 1923, s. 29 (1), *infra*, p. 435; but in the case of a deceased person, the time does not extend beyond the third year after the year of assessment in which he died: Act of 1923, s. 29 (3).

(*h*) *Pickford* v. *Quirke* (1927), 44 T. L. R. 15; 13 Tax C. 251.

(*i*) *Supra*, p. 362; *Berry* v. *Farrow*, *supra*, p. 368.

(*j*) Act of 1926, s. 31 (1) (a), (b), *supra*, p. 166. As to succession being treated as a discontinuance, see Sched. D, Cases I. & II. r. 11 (1), proviso, *supra*, p. 167.

Revenue as regards the account year on which the profits of a trade, &c. are to be computed (*k*); and on ceasing to possess a source of income chargeable under Case III., Rule 1, Case IV. or Case V. (*l*); under Schedule E, where an office or employment, or an annuity, pension or stipend comes to an end (*ll*).

Surcharges.

A surcharge is another form of retarded assessment; this method of procedure gives the revenue authorities somewhat wider powers than they possess in proceeding by way of additional first assessment; but it is available only if the person in question has not been charged to income tax for the year (*m*). If the surveyor "discovers" (*n*) that this is so, he may surcharge the person liable.

He can only do so, and must certify the General Commissioners that he has done so (*o*), within six years after the expiration of the year of assessment for which the person liable ought to have been charged; the latter is entitled to notice (*p*), and as the date of service has to be stated in the certificate (*q*) the notice also must be given within the time limited.

Within ten days from the service of the notice, the person to whom it has been given may, whether he has previously made a return or not, deliver to the surveyor a correct return, or give him notice in writing that he abides

(*k*) Sect. 34 (2), *supra*, p. 162.

(*l*) Sect. 30, proviso, *supra*, p. 177, read with sect. 31 (1).

(*ll*) Act of 1927, s. 45 (5), *supra*, p. 256.

(*m*) Act of 1918, s. 126 (1), *infra*, p. 435. The Royal Commission in para. 427 of their report say that the power of making a surcharge is "confined to cases where there has been no previous assessment on the source of income in question"; but the Act makes no reference in this connection to different sources of income, or different Schedules; and the income tax is one tax, on whatever source of income it may be charged: *London County Council* v. *A.-G.*, *supra*, p. 3.

(*n*) The word here doubtless bears the same meaning as in sect. 125 (1), *vide supra*, p. 368.

(*o*) Act of 1918, ss. 126 (1) (2), 129 (5), as amended by Act of 1923, s. 29 (1), *infra*, p. 567; the time is more limited in the case of a deceased person, see s. 29 (3), *supra*, note (*g*).

(*p*) Act of 1918, s. 126 (2); as to the method of service, see sect. 220 (5), *infra*, p. 467.

(*q*) Sect. 126 (6).

by his previous return; but he must annex to the return or notice a declaration signed and attested by witnesses (*r*).

In the meantime, the surveyor has certified the surcharge to the General Commissioners (*s*); but they can take no action till the ten days have expired (*t*). Service of the notice must be proved on oath (*u*). If a return or notice and declaration have been delivered within the ten days, and the surveyor certifies his satisfaction to the General Commissioners, they are to charge the person on the amount set out in the return "in single rate of tax" (*x*).

If, however, a return or notice by the person surcharged and a declaration have been delivered within the ten days, and the surveyor serves a notice of objection on the person surcharged, and certifies to the General Commissioners the cause of his objection, the delivery of the return or notice and declaration operates as a notice of appeal to them against the surcharge (*y*). And even if the return or notice and declaration have not been delivered within the ten days, the person surcharged may appear before the General Commissioners personally or by agent "on the day appointed for hearing appeals against surcharges," and deliver a return and declaration, in which case the General Commissioners may hear his appeal (*z*).

Appeals are to be heard as in the case of first assessments (*a*); the burden of proof is on the person surcharged and it is for him to show that the contents of the certificate and notice of surcharge are incorrect (*b*).

In certain circumstances (connected with the date and notice of appeal meetings) (*c*) the Commissioners are to

(*r*) Sect. 127 (1), (2); the heads of this declaration, which might almost be called a confession, will be found in sub-sect. (2) (a)—(e); penalties for fraud are provided in sub-sect. (3).

(*s*) Sect. 126 (2); see also sect. 129 (6). (*t*) Sect. 126 (4).

(*u*) Sect. 126 (3) and (6).

(*x*) Sect. 127 (4); the Commissioners are presumably to sign and allow a supplementary assessment on the surcharge as amended, see sect. 130 (2) (a).

(*y*) Sect. 128, read with sect. 129 (1).

(*z*) Sect. 129 (2); "may" here seems to mean "must."

(*a*) Sect. 137 (6) (a), *infra*, p. 441; see Chap. XVII.

(*b*) Sects. 126 (5), 137 (4).

(*c*) Sect. 137 (6) (a) should be read with sect. 134 (3) and sect. 135.

sign and allow the certificate first, and to hear and determine appeals afterwards (*d*).

Upon appeal, the General Commissioners may either increase or reduce the surcharge (*e*); if it is allowed in whole or in part, the assessment is made in treble the rate of tax, unless they find that the surveyor might have amended the assessment by means of the original return, that there was no intent to defraud on the part of the person charged, that he was prevented by sufficient cause from making an amended return, or that there was reasonable cause of doubt as to his liability or as to the amount of it (*f*).

If there is no appeal (*g*) the General Commissioners are to confirm the certificate of surcharge (*h*); they have apparently no power to increase or reduce the amount, nor is there any power to levy treble tax (*i*), unless the case is one of default in connection with returns and so comes within the purview of sect. 107 (*k*).

(*d*) Sect. 129 (4); it is difficult to see the object of this provision.

(*e*) Sect. 137 (4), (5).

(*f*) Sect. 137 (6) (b).

(*g*) See above as to what constitutes an appeal.

(*h*) Sect. 129 (3).

(*i*) Sub-sects. (4), (5) and (6) (b) of sect. 137 apply only where there is an appeal.

(*k*) *Vide supra*, p. 351.

CHAPTER XVII.

APPEALS AND OTHER REMEDIES OPEN TO THE SUBJECT.

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Right of Appeal.

ANY person aggrieved by an assessment upon him has a right of appeal against that assessment, under whatever Schedule it is made (*a*). And any owner or other person in receipt of rent for lands, although he is not the occupier, who is aggrieved by the amount of the Schedule A assessment, may appeal against it (*b*). An appeal may be brought against the assessment under Schedule A or Schedule B for any year of assessment, even though the annual value on which the assessment is based was fixed in a previous year; the appeal is to be dealt with on the facts of the later year (*c*).

(*a*) Sects. 136, 147, 148, *infra*, pp. 439, 445; Parts VI. and VII. of the Act of 1918 are obscure; but sect. 136 appears to apply to assessments by whomever made, and under whatever schedule, except those made by the Special Commissioners, which are dealt with in sect. 147. See also sect. 208, which replaces sect. 188 of the Act of 1842; *Berry* v. *Farrow*, [1914] 1 K. B. 632, at p. 638.

(*b*) Sect. 136 (2); he is given a right of appeal because the occupier can deduct tax against him, *vide supra*, p. 55; but a mortgagee, chargee, or annuitant, though he must also submit to a deduction, is not expressly given such a right. The rights of appeal with regard to an ordinary assessment under Sched. A were applied to the determination of annual values for the purpose of the 1923—24 assessments by the Act of 1922, Second Sched., art. (5), *infra*, p. 560, but were extended by the Act of 1923, s. 28 (4), *infra*, p. 377.

(*c*) Act of 1923, s. 26 (1), *infra*, p. 565; as to the adoption of annual value in subsequent years, *vide supra*, pp. 46, 363.

Rights of appeal are expressly given by recent Finance Acts with regard to the following kinds of assessment:—

Retrospective assessments or additional assessments (including directions or claims for repayment), consequential on the selection of accounting periods by the Commissioners of Inland Revenue for the purposes of Case I. of Schedule D. The appeal may be brought before the General or the Special Commissioners (*d*).

Assessments in respect of sur-tax generally (*e*); and decisions by the Special Commissioners in connection with sales and purchases *cum* dividend and with income attributable to a period exceeding one year (*f*); all these appeals go before the Special Commissioners.

Assessments made in respect of annual payments, royalties and other sums not wholly payable out of profits or gains brought into charge (*g*); such appeals go before the Special Commissioners.

Except as noted above, appeals in general are brought before the General Commissioners (*h*); but if an assessment under Schedule D has been made by the Special Commissioners (*i*), the appeal is brought before that body (*k*). And even if the Special Commissioners have not made the assessment, the person assessed may elect to have his appeal brought before them in the case of an assessment under Schedule D (*l*) or Schedule E (*m*).

These rights extend so as to allow appeals against first and additional first assessments, against objections by the surveyor, and against surcharges (*n*).

(*d*) Act of 1926, s. 34 (3), *vide supra*, p. 163.

(*e*) Act of 1927, s. 42 (7); see Chap. XIV.

(*f*) Act of 1927, s. 36 (2); see sects. 33, 34, 35, *supra*, pp. 336, 338, 339. The rights of appeal in connection with sur-tax on the income of companies under sect. 21 of the Act of 1922 and sect. 31 of the Act of 1927 are considered in Chap. XIV.

(*g*) General Rule 21 (2B), as substituted by Act of 1925, s. 26, *vide supra*, p. 366.

(*h*) Act of 1918, s. 136 (1).

(*i*) *Vide supra*, p. 365.

(*k*) Act of 1918, s. 147.

(*l*) Sect. 148.

(*m*) Finance Act, 1922, s. 19, *infra*, p. 547.

(*n*) Sects. 136, 137, 148. As to these various forms of assessment, see Chap. XVI.

An appeal lies against an assessment, even if it is based on an inaccurate return made by the appellant (*o*).

A claim (*p*) for any relief by way of deduction of tax, if the surveyor objects to it in writing, is heard by way of appeal, by the General Commissioners (*q*). Such an appeal can apparently be heard by the Special Commissioners if the assessment has been made by them under Schedule D, or if it is made under Schedule D or E, and the claimant so elects; except that any claimant for total exemption on the ground that his income does not exceed 130*l*. (*r*) can appeal only to the General Commissioners. Appeals from decisions of the Commissioners of Inland Revenue on the question whether the claimant's status or residence (*s*) entitles him to such relief, or to relief in respect of life insurance premiums and similar payments, are brought to the Special Commissioners (*t*).

A similar right of appeal exists against decisions of the Commissioners of Inland Revenue on certain questions of residence or domicil (*u*).

Claims by charitable bodies for exemption in respect of income derived from various sources and of lands owned and occupied by them, if refused by the Commissioners of Inland Revenue, may be the subject of appeal to the Special Commissioners; as may claims for repayment of tax on interest on advances made by banks, stockbrokers and discount-houses (*x*).

(*o*) *Holborn Viaduct Land Co., Ltd.* v. *The Queen* (1887), 2 Tax C. 228, *infra*, p. 394.

(*p*) *Vide supra*, p. 353.

(*q*) Sect. 27 (5), *infra*, p. 411, which replaces sect. 164 of the Act of 1842; see per SWINFEN EADY, L.J., in *Furtado* v. *City of London Brewery Co.*, *infra*, p. 389, [1914] 1 K. B. at p. 714; Act of 1927, s. 41 (2). These enactments are in a very confused state; cf. succeeding notes.

(*r*) Act of 1918, s. 148 (3); this provision seems obsolete since the passing of the Finance Act, 1920, s. 18, *vide supra*, p. 13.

(*s*) See pp. 12, 13, *supra*.

(*t*) Act of 1927, s. 41 (3), proviso; Act of 1926, s. 20; Act of 1925, s. 19 (3); Act of 1920, s. 24 (1), proviso; *vide infra*, p. 381.

(*u*) Act of 1924, s. 27; these questions are indicated *infra*, p. 381.

(*x*) Act of 1925, s. 19, *vide infra*, p. 390.

Appeal in most cases the only remedy.

Where there is a right of appeal, and the person assessed fails to avail himself of it, he cannot afterwards bring a petition of right to recover the money overpaid (*y*). There are certain specific cases in which application can be made for subsequent adjustment or repayment; but these are very limited in their scope (*z*). An assessment not appealed against cannot be challenged in bankruptcy proceedings (*a*).

The Commissioners hearing an appeal have jurisdiction to determine whether the preliminary state of facts exists which enables an assessment to be made, *e.g.*, whether the appellant is carrying on a trade in the United Kingdom so as to be chargeable under Schedule D (*b*); and (unless the Commissioners decide without any evidence on which they could honestly do so) the remedy for any person aggrieved by an assessment, even if he is aggrieved by reason of his not being chargeable at all, is by appeal and case stated; the remedy is not by prohibition (*c*). An action would not appear to lie for a declaration which would prevent the Commissioners from exercising their discretion upon an appeal (*d*).

Prohibition Lies in Certain Cases only.

On the other hand, if Parliament in establishing a tribunal "in effect says that, if a certain state of facts exists and is shown to such tribunal before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise . . . . it is not for them conclusively to decide

(*y*) *Holborn Viaduct Land Co.* v. *The Queen, supra.*

(*z*) *Vide infra*, pp. 388—392.

(*a*) *In re Calvert*, [1899] 2 Q. B. 145.

(*b*) *Vide supra*, p. 89.

(*c*) *R.* v. *Clerkenwell Commrs., Ex parte Kodak, Ltd.*, [1901] 2 K. B. 879; *R.* v. *Bloomsbury Commrs., Ex parte Hooper*, [1915] 3 K. B. 769, *supra*, p. 368; *R.* v. *Kingsland Commrs., Ex parte Pearson* (1922), 8 Tax C. 327, *supra*, p. 43; *R.* v. *Swansea Commrs., Ex parte English Crown Spelter Co., Ltd.*, [1925] 2 K. B. 650; *R.* v. *Special Commrs., Ex parte Schlesinger* (1928), 13 Tax C. 746, *supra*, p. 368. Contrast note (*e*), *infra*.

(*d*) Cf. *Smeeton* v. *A.-G.*, [1920] 1 Ch. 85.

whether that state of facts exists" (*e*). Accordingly, a body of Commissioners cannot by a decision which is wrong either in fact or in law, give themselves jurisdiction to assess a person, whom they have no power to assess by reason of the place (*f*) where he should be charged not being within their area of jurisdiction. A writ of prohibition may issue forbidding those Commissioners to assess him. Where the person assessed could in law only be assessed in respect of certain profits by a certain body of Commissioners, it was held that prohibition would lie to prevent another such body from allowing or confirming an assessment made upon him in respect of those profits (*g*). Even if the question is one of fact as to whether the person assessed ordinarily resided at material times within the division of certain Commissioners, the Court will, if there is conclusive evidence that he did not, prohibit those Commissioners from proceeding on the assessment. The person assessed is not bound to wait for his remedy until his assessment is confirmed (*h*).

If there is any suppression of material facts in the affidavit on which the rule for a prohibition is moved, the Court will refuse the writ (*a*).

Time for Appealing: Notice of Appeal.

Notice of appeal must be given within twenty-one days after the date of the notice of assessment, objection or surcharge; it must be given in writing to the surveyor (*b*).

(*e*) *R.* v. *Special Commrs., Ex parte Cape Copper Mining Co., Ltd.* (1888), 21 Q. B. D. at p. 319; Lord ESHER, M.R., goes on to refer to the converse case where the jurisdiction given to the tribunal includes "the jurisdiction to determine whether the preliminary state of facts exists"; see note (*c*).

(*f*) *Vide supra,* pp. 358 *sqq.*, as to place and method of assessment.

(*g*) *R.* v. *Kensington Commrs., Ex parte Aramayo,* [1914] 3 K. B. 429; the decision was affirmed in H. L., [1916] 1 A. C. 215, but this point was not there argued; similar proceedings were taken in *R.* v. *Southampton Commrs., Ex parte Singer,* [1917] 1 K. B. 259. Sched. D, Misc. Rules, r. 4, which takes the place of sects. 106 and 108 of the Act of 1842, differs widely from those sections, and the questions as to the legality of the assessments which arose in the cases cited are no longer open; *vide supra,* p. 359, note (*t*).

(*h*) *R.* v. *Aldrington Commrs.,* [1916] W. N. 276; 85 L. J. K. B. 1753.

(*a*) *R.* v. *Kensington Commrs., Ex parte Polignac,* [1917] 1 K. B. 486.

(*b*) Sects. 136 (1), *infra,* p. 439; 148 (1), *infra,* p. 446. See note (*a*) on p. 373, *supra;* and the next paragraph. This does not apply to appeals against decisions of the Commissioners of Inland Revenue on questions of residence and domicil, as to which see p. 382, *infra.*

If the person assessed elects to appeal to the Special Commissioners, this must be stated in the notice (*c*). If the appeal is against an assessment under Schedule D, the grounds of appeal must be specified in the notice; but the Commissioners hearing the appeal may allow the appellant to go into any ground not so specified, unless the omission was wilful or unreasonable (*cc*).

Special provision is made for extension of time in cases of absence, sickness or other reasonable cause (*d*), as well as for cases of removal (*e*).

Procedure on Appeals.

The General Commissioners are bound to give general notice (as well as a notice to persons assessed) of the day for hearing appeals from assessments under Schedules A and B; with regard to assessments under Schedule D they are to publish a general notice limiting a reasonable time for hearing appeals (*f*). But any direction contained in these notices cannot restrict the right of the subject to appeal within the time allowed by sect. 136 (*g*). The surveyor is also entitled to notice of appeal meetings (*h*).

Every appellant is entitled to notice of the day for hearing appeals (*i*).

The Commissioners shall permit the appellant or the Revenue officers to be represented (either *vivâ voce* or in writing) by counsel or solicitor, and shall hear any member of an incorporated society of accountants (*k*). In an appeal against the assessment of annual value for Schedule A or Schedule B, the Commissioners are obliged to hear any agent appointed by the appellant (*l*).

(*c*) Sect. 148 (1).
(*cc*) Act of 1926, s. 25 (1), *infra*, p. 578.
(*d*) Act of 1918, s. 136 (3); see note (*i*), *infra*.
(*e*) Sect. 136 (4).
(*f*) Sect. 134.
(*g*) *Vide supra*.
(*h*) Sect. 135.
(*i*) Sect. 137 (1); if an appeal under Sched. D is adjourned, the assessment may be signed and allowed in the meantime: Act of 1926, s. 25 (2), *supra*, p. 365.
(*k*) Sect. 137 (3) as amended by Act of 1923, s. 25 and Sched. The Special Commissioners have the same powers and duties in hearing appeals as the General Commissioners: Act of 1918, s. 67 (2), *infra*, p. 424.
(*l*) Act of 1923, s. 26 (2), *infra*, p. 566.

The surveyor and assessor are entitled to be present at the hearing of the appeal and to give reasons in support of the assessment, as well as to be present when judgment is given; but they have no right to be present while the Commissioners deliberate in the absence of the appellant or his representative (*m*).

It is for the appellant to show that the assessment appealed against is excessive; the Commissioners may examine the appellant on oath or affirmation and may take other lawful evidence adduced by either party (*n*). They may summon witnesses and examine them on oath (*o*). They are not bound to administer an oath to the appellant if he has informed them of the nature of his evidence and they place no reliance on it; nor is his oath conclusive by itself (*p*). On the other hand, the mere refusal to produce books does not of itself justify them in deciding against the appellant (*q*). They are entitled to insist on production of accounts where the ultimate object of certain expenditure is in question; but an appeal in which they had decided against the appellant because those accounts were not produced, was remitted for rehearing after production of the accounts (*r*).

The Commissioners are not obliged to hear all evidence that may be tendered; if they come to the conclusion that certain evidence will not assist them, they may refuse to hear it (*s*), but they must not make any such general rule as that they will never hear expert evidence (*t*).

In an appeal against an assessment by Additional Commissioners or in dealing with an objection by the surveyor

(*m*) *R.* v. *Brixton Commrs.* (1913), 6 Tax C. 195.

(*n*) Act of 1918, s. 137 (4), (2) (b). As to the grounds which may be gone into, *vide supra*, p. 378, note (*cc*).

(*o*) Sects. 144, 145.

(*p*) *R.* v. *Chew* (1894), 71 L. T. 541; 3 Tax C. 289.

(*q*) *Ibid.*, per RIGBY, L.J. See, however, *Haythornthwaite, Ltd.* v. *Kelly*, *infra*, note (*u*).

(*r*) *Grahamston Iron Co.* v. *Crawford*, [1915] S. C. 536; 7 Tax C. 25.

(*s*) *R.* v. *Offlow Commrs.* (1911), 27 T. L. R. 353. In *Gundry* v. *Dunham*, however (*infra*, p. 381), SWINFEN EADY, M.R., expressed a somewhat wider view of the duty of the Commissioners to hear evidence tendered.

(*t*) *R.* v. *Offlow Commrs.*, per Lord ALVERSTONE, L.C.J.

to such an assessment, the General or Special Commissioners may issue a precept to the appellant to deliver a schedule of particulars in relation to certain specified matters (*u*); penalties are provided for failure (*x*), as well as opportunities for amendment (*y*), for objection by the surveyor (*z*) and for answers to further precepts (*a*). The schedule delivered is not necessarily conclusive (*b*).

When the annual value of lands is in dispute in an appeal under Schedule A or B, the appellant may require a valuation to be made by a person of skill; or the General Commissioners may direct it to be made of their own initiative. Such a valuation when verified on oath by the person who made it is conclusive of the annual value (*c*). If no such valuation is made, the Commissioners are to determine the question to the best of their judgment (*c*), and are entitled to avail themselves of their personal knowledge of the value of property in the district and of the nature and history of the property in question (*d*).

The Commissioners may confirm or alter the assessment (*e*); they may either reduce it or increase it (*f*). If they increase the assessment above the amount shown in the appellant's return or schedule, they may charge him with treble duty on the excess, unless they are satisfied that he has not been fraudulent, or grossly or wilfully negligent (*g*). A similar penalty applies if he has neglected or refused to deliver a return or schedule (*h*). Treble tax is also leviable on a surcharge upheld on appeal, if there are no extenuating circumstances (*i*).

(*u*) Sect. 139, *infra*, p. 442. This power does not enable them, where the appellant is a company, to require the production of the shareholders' pass-books: *Haythornthwaite, Ltd.* v. *Kelly* (1927), 11 Tax C. 657.

(*x*) Sect. 139 (3); sect. 146 (2), *infra*, p. 445.

(*y*) Sect. 140, *vide supra*, p. 352.

(*z*) Sect. 141.

(*a*) Sect. 143.

(*b*) *R.* v. *Chew, supra.*

(*c*) Sect. 138, *infra*, p. 441. This section does not apply within the County of London, where the valuation list made for rating purposes is conclusive; *vide supra*, p. 47.

(*d*) *Stocks* v. *Sulley* (1899), 1 F. 1020; 4 Tax C. 98; *supra*, p. 45.

(*e*) Sect. 137 (4), sect. 142. In reading the latter section it should be borne in mind, as pointed out above, that the schedule is not conclusive.

(*f*) Sect. 137 (5).

(*g*) Sect. 146 (1) (a); *vide supra*, p. 351.

(*h*) Sect. 146 (2).

(*i*) Sect. 137 (6). As to surcharges, *vide supra*, p. 370.

The determination of the Commissioners on an appeal is final, and the assessment cannot be altered thereafter save where a case is required to be stated by them (*k*); a withdrawal of the appeal by the appellant is not a determination by the Commissioners (*l*). This provision is of course subject to the various rights of application for adjustment or repayment (*m*).

The general principles upon which the Courts will or will not interfere by *mandamus* or *certiorari* with the exercise of a judicial or quasi-judicial jurisdiction (*n*) apply to decisions of General or Special Commissioners on appeals under the Income Tax Acts. If the Commissioners have addressed their minds to the right question with which they are empowered to deal, the Courts will not interfere and will not consider whether that question has been answered rightly or wrongly (*o*).

Appeals on questions of Residence and Domicil.

There is a right of appeal to the Special Commissioners from a decision of the Commissioners of Inland Revenue on the following questions of domicil and residence: namely, whether an individual is resident in the United Kingdom so as to be entitled to the earned income and other reliefs by way of deduction, or is within the excepted classes of non-residents who are so entitled (*p*); whether a person is not ordinarily resident, and therefore exempt from tax in respect of War Loan interest, &c. (*q*); or is not resident, and therefore exempt from tax in respect of interest on foreign and

(*k*) Sect. 133 (2), (3), *infra*, p. 439.

(*l*) *Gundry* v. *Dunham* (1915), 7 Tax C. 12, *supra*, p. 46.

(*m*) *Vide infra* p. 388.

(*n*) *R.* v. *Special Commrs.* (1888), 21 Q. B. D. 313, *supra*, p. 377; and see, *e.g.*, *Board of Education* v. *Rice*, [1911] A. C. 179.

(*o*) Cf. *R.* v. *City of London Commrs.*, *infra*, p. 390. *Mandamus* where no appeal is provided is referred to *infra*, p. 391.

(*p*) Act of 1920, s. 24 (1), proviso, *vide supra*, p. 12. The right of appeal is given by sect. 20 of the Act of 1926, and preserved by the proviso to sect. 41 (3) of the Act of 1927, *infra*, pp. 577, 600.

(*q*) Act of 1918, s. 46 (1), *supra*, p. 75; Act of 1924, s. 27 (3) (a), *infra*, p. 569.

colonial securities (*r*), or on the stocks, &c. of foreign and colonial companies, or in respect of Indian annuities (*s*); whether a person is not domiciled or not ordinarily resident, so as to make him chargeable, in respect of the income from foreign securities, stocks, shares and rents, only on the amounts received in this country (*t*). Notice of application or appeal must be given within three months from the date of notice of the decision of the Commissioners of Inland Revenue; and the appeal is to be heard as if it were an appeal against an assessment under Schedule D (*u*).

Case Stated.

When an appeal has been determined, either the appellant or the surveyor "if dissatisfied with the determination as being erroneous in point of law," is entitled to have a case stated for the opinion of the High Court (*v*). The existence of a further right of appeal to a Board of Referees, as under sect. 21 of the Finance Act, 1922, does not prevent the statement of a case (*x*). In order to have a case stated, the dissatisfied party must declare his dissatisfaction to the Commissioners who heard the appeal, immediately the determination is pronounced (*y*). After that declaration and within twenty-one days after the determination, the dissatisfied party must by notice in writing to their clerk "require the Commissioners to state and sign a case for the opinion of the High Court thereon"; he must also pay the clerk a fee of 1*l*. (*z*). If, after such a notice has been given on behalf of the Crown, the respondent dies, the proceedings will nevertheless be continued (*a*); so also the executor may

(*r*) Sched. C, r. 2, *supra*, p. 73; Act of 1924, s. 27 (3) (c) (i).

(*s*) Sched. D, Misc. Rules, r. 7, *supra*, p. 188; Act of 1924, s. 27 (3) (c) (ii).

(*t*) Sched. D, Cases IV. and V., see Chap. VIII.; Act of 1924, s. 27 (3) (b).

(*u*) Act of 1924, s. 27 (1), (2); Act of 1925, s. 19 (2); Act of 1926, s. 20, *infra*, pp. 569, 574, 577.

(*v*) Act of 1918, s. 149, *infra*, p. 446; *Smith* v. *Williams*, [1922] 1 K. B. 158; Act of 1924, s. 27.

(*x*) *D. Carlaw & Sons, Ltd.* v. *I. R.*, [1926] S. C. 870, *vide supra*, p. 331.

(*y*) Sect. 149 (1) (a).

(*z*) Sect. 149 (1) (b), (c); *R.* v. *Edmonton Commrs.*, [1929] 1 K. B. 220.

(*a*) *Smith* v. *Williams*, *supra*.

continue the proceedings if the taxpayer dies after the notice has been given by him (*b*).

When the case has been stated and signed, the party requiring it must transmit it to the High Court within seven days after receiving it, and must at or before transmission send a copy to the other party with a notice in writing that the case has been stated on his application (*c*). The terms of the case are, in practice, often agreed between the parties (*d*), being drafted in the first instance by the party requiring it, but the Commissioners are by no means bound to allow this, and the parties are in their hands as to the manner in which the case is stated (*e*).

The tax has to be paid nevertheless according to the assessment of the Commissioners (*f*); but if the High Court alters the amount of assessment, any excess paid is refunded with such interest as is allowed by the High Court, and any under-payment is recovered as arrears of tax, of course without penalty (*g*).

Procedure in the High Court on a Case Stated.

In England, a case stated by Commissioners is dealt with in the King's Bench Division on the Revenue Side, and the Rules of the Supreme Court do not apply (*h*), except as provided by Order LXVIII., Rule 2. The case is filed in the King's Remembrancer Department, where

(*b*) *Fitzgerald* v. *I. R.*, [1919] 2 K. B. 154, *supra*, p. 323.

(*c*) Sect. 149 (1) (d), (e); if the original respondent is dead, the copy and notice may be served on or by his executor, and the High Court will add him as respondent or appellant: *Smith* v. *Williams; FitzGerald* v. *I. R.* Where the inspector of taxes has required the case, delivery at the office at which he was employed when the appeal was heard amounts to receipt of the case by him, and he must comply with the condition stated in the text: *Grainger* v. *Singer*, [1927] 2 K. B. 505.

(*d*) See *Manchester Corpn.* v. *Sugden*, [1903] 2 K. B. 171, *infra*.

(*e*) *Vide infra*, p. 385; and see *Haythornthwaite* v. *Kelly* (1927), 11 Tax C. 657.

(*f*) As to recovery while a special case is pending, see *A.-G.* v. *Avelino Aramayo & Co.*, [1925] 1 K. B. 86.

(*g*) Sect. 149 (4); on an appeal with regard to a claim for allowance or deduction in respect of income on which tax has been deducted at the source, no interest can be allowed, because there is no "assessment": *Brennan Trustees* v. *Scanlan*, [1925] W. N. 114. As to recovery of arrears, *vide infra*, p. 403.

(*h*) R. S. C., Ord. LXVIII. r. 1.

the correct procedure should be ascertained (*i*). The case may be set down for hearing by either party (*j*).

The case is heard by a single Judge (*k*). There is an appeal to the Court of Appeal and the House of Lords (*l*). In Scotland, an appeal lies from the Court of Session as the Court of Exchequer in Scotland to the House of Lords (*l*).

The High Court "has to decide whether the determination was or was not erroneous in point of law, and any point of law that can be raised properly upon the facts found by the Commissioners the Court can decide" (*m*); but it will not deal with any question that does not arise on the case stated (*n*). The Court may reverse, affirm, or amend the determination, remit the matter to the Commissioners for consideration and decision, or make such other order as it deems fit (*o*); or may return the case to be amended and returned before the Court gives judgment (*oo*). As to costs, the Court may also make such order as seems fit (*p*); but the Crown cannot be ordered to pay costs if successful (*q*). In England, the costs may include the costs of settling the case, incurred before it is filed (*r*); the contrary has been held in Scotland (*s*).

(*i*) It is founded on the Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21), the Rules made thereunder dated June 22nd, 1860, and R. S. C., Ord. XXXIV. (Special Case) so far as this is applicable.

(*j*) See *Tarn* v. *Scanlan*, [1928] A. C. at p. 45; no "points for argument" need be delivered.

(*k*) Owing to Ord. LIX. r. 1 (d) having been annulled by R. S. C., July, 1901, r. 8.

(*l*) Sect. 149 (3). In England Ord. LVIII. applies, and notice of appeal to the C. A. must be given before the expiration of fourteen days from the time when the order of the K. B. D. is signed, entered, or otherwise perfected: Ord. LVIII. rr. 3, 9, 15; cf. *Onslow* v. *I. R.* (1890), 25 Q. B. D. 465.

(*m*) *Avelino Aramayo & Co.* v. *Ogston*, [1925] 1 K. B. 86; see per ATKIN, L.J., at p. 109.

(*n*) *Bray* v. *Lancashire JJ.* (1889), 22 Q. B. D. 484, *supra*, p. 38.

(*o*) Sect. 149 (2) (a); *Edwards* v. *Old Bushmills Distillery Co., Ltd.* (1926), 10 Tax C. 285. (*oo*) Sect. 149 (2) (b).

(*p*) Sect. 149 (2) (a). R. S. C., Ord. LXV. (costs) applies as far as applicable. A party may be ordered to pay costs, although he is assessed only in a representative capacity, as agent for a non-resident principal: *Wilcock* v. *Pinto* (1925), 10 Tax C. 415; *vide supra*, p. 275.

(*q*) *I. R.* v. *Brooke*, [1923] 2 K. B. 814, 831.

(*r*) *Manchester Corporation* v. *Sugden*, *supra*, note (*d*).

(*s*) *Scottish Union, &c.* v. *Smiles* (1889), 16 R. 624.

A decision on a case stated with regard to a former assessment may be conclusive with regard to an assessment for a later year on the same person (*t*); but is not necessarily so if the facts are in any way different (*u*).

What is a Question of Law?

In an appeal the Commissioners are the sole judges of fact (*v*); and the function of the High Court in dealing with a case stated is only to hear and determine any question of law arising on the case (*w*). Upon cases stated under the Income Tax Acts as upon special cases of other kinds, there has been frequent controversy (*x*) as to whether, and to what extent, the matter is concluded by the finding of the tribunal which stated the case. A mere statement in the case that a conclusion of the Commissioners is a finding of fact does not preclude the High Court from reviewing that conclusion, if it is in truth a finding of law (*y*). Further, even if the case contains a conclusion which is a finding of fact, the High Court will enquire whether there was any evidence upon which it was possible for the Commissioners to come to that conclusion; that is a question of law; but the Court will not decide the question of fact whether upon the evidence that finding is correct (*z*).

(*t*) *Aylmer* v. *Mahaffy* (1925), 10 Tax C. 594; *Hoystead* v. *Commr. of Taxation*, [1926] A. C. 155.

(*u*) *Edwards* v. *Old Bushmills, &c. Co., supra.*

(*v*) See, *e.g.*, *De Beers Consolidated Mines* v. *Howe*, [1906] A. C. 455, *supra*, p. 96; *P. & O. S. N. Co.* v. *Leslie* (1889), 4 Tax C. 177; *British India S. N. Co.* v. *Leslie* (1900), 4 Tax C. 257, *supra*, p. 150.

(*w*) Sect. 149 (2) (a), *infra*, p. 446.

(*x*) The cases selected for citation here are cases in which the functions of the Court on hearing a case stated have been expressly considered; but the great majority of cases cited throughout this book have arisen by way of case stated, and afford illustrations of the exercise of those functions.

(*y*) See, *e.g.*, the observations of Lords ATKINSON and CARSON in *Great Western Rail. Co.* v. *Bater*, *supra*, p. 245, [1922] 2 A. C. at pp. 12, 35. See also *Bell* v. *National Provincial Bank*, [1904] 1 K. B. 149, *supra*, p. 169; *Kirk and Randall, Ltd.* v. *Dunn* (1924), 8 Tax C. 663, *supra*, p. 169; *Cooper* v. *Stubbs*, *supra*, p. 81, note (*z*).

(*z*) *New Zealand Shipping Co.* v. *Stephens* (1908), 5 Tax C. 553, *supra*, p. 95; *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89, *supra*, p. 95; *American Thread Co.* v. *Joyce* (1911), 6 Tax C. 1, 163, *supra* p. 95; *Great Western Rail. Co.* v. *Bater*, [1921] 2 K. B. 128; [1922] 2 A. C. 1;

A case stated is very liable to one of two opposite dangers; either that one party may be "stated out of Court" by the findings of fact, or that, where the findings fall short of stating one party out of Court, it may be contended that they fail to afford any ground for his contention of law. An instance of the latter kind occurred where the Commissioners had recorded a number of findings of fact with regard to deductions claimed by brewers in ascertaining the profits of their trade; it was contended on the part of the Crown that these findings did "not amount together to a finding that the sums claimed to be deducted were wholly and exclusively laid out or expended for the purposes of the appellants' trade," that is to say, to a finding in the precise words of Rule 1 of the First and Second Cases of Schedule D of the Act of 1842 (*a*); and that therefore the case was concluded against the appellants. Obviously, if there had been a finding in those precise words, the case would have been concluded against the Crown (*b*). The House of Lords refused the Crown's contention, and Lord ATKINSON said:

"It is for a Court of law to construe these several paragraphs as written documents, just as the Courts of law often have to construe the answers (in writing) of juries to questions put to them by the judge presiding at a trial, or as such Courts have to construe a correspondence between parties litigant to determine whether their letters in the aggregate contain a concluded contract in writing.

"In doing this the tribunal of law does not usurp the jurisdiction of the tribunal of fact, and from facts found by the latter draw a further inference of fact. It merely

Currie v. *I. R.*, [1921] 2 K. B. 332; *I. R.* v. *Sansom*, [1921] 2 K. B. 492; *New Zealand Shipping Co.* v. *Thew* (1922), 8 Tax C. 208, *supra*, p. 96; *Ducker* v. *Rees Roturbo Syndicate, Ltd.*, [1928] A. C. 133, *supra*, p. 124. The judgment of HAMILTON, J., in *American Thread Co.* v. *Joyce*, which was adopted in terms by the Court of Appeal and House of Lords, contains a complete exposition of this matter; but it is very difficult to reconcile the authorities: see per SCRUTTON, L.J., in *Rees Roturbo, &c., Ltd.* v. *Ducker*, [1928] 1 K. B. at p. 517.

(*a*) *Usher's Wiltshire Brewery* v. *Bruce*, [1915] A. C. 433, *supra*, p. 117. See now Sched. D, Cases I. and II. r. 3 (a), *infra*, p. 499.

(*b*) In *Youngs, Crawshay & Youngs, Ltd.* v. *Brooks* (1912), 6 Tax C. 393, the Crown had upon very similar findings submitted to judgment.

discharges its proper and exclusive function of construing written documents" (*c*).

The following passages from Lord SUMNER's judgment (*d*) not only deal with that point, but define the province of a Court adjudicating upon a case stated (*e*):—

"The question which arises at the outset of this case is, what facts have the Commissioners found? The jurisdiction of the High Court, and on appeals from it, is by sect. 59, sub-sect. 2 (b) of the Taxes Management Act, 1880 (*f*), to 'hear and determine the question or questions of law arising on a case transmitted under this Act.' This involves the construction of the language of the case stated. It must be interpreted in the light of common knowledge and by the common sense of the language used; but the findings of fact, as such, when ascertained are final. . . . .

"All questions that could be raised on the whole case (and they were many) were intended to be left open. I think that, in the context in which these expressions are used, all alike mean that the disbursements in question, money foregone being properly within these words, were 'money wholly and exclusively laid out or expended for the purposes of such trade,' that is to say, the brewer's trade.

"In the judgment appealed from it is said, 'I can see no such finding of fact in this case.' This is so in terms, but in substance it is otherwise. Furthermore, the judgment seems to say that the question whether a given disbursement is 'wholly or exclusively laid out for the purposes of the trade or concern' is a question of law and not of fact. With this I am not able to agree. Though the answer to the question may itself be an inference from a wide area of facts, it is an answer of fact. There is no suggestion here that the Commissioners found the facts under any mistake in law, including in that term the view,

(*c*) [1915] A. C. at pp. 449, 450; see also note (*z*) on p. 385.

(*d*) *Ibid.*, at pp. 465—7.

(*e*) Apart from deciding the question, above referred to, whether there was evidence upon which the finding could be reached.

(*f*) Now sect. 149 (2) (a) of the Act of 1918, *infra*, p. 446.

conscious or unconscious, that a fact may be found which there is no relevant evidence to support. . . . .

"The questions of law raised are, and are only, whether, on the construction of the Act, the deductions in debate, though 'disbursements or expenses, being money wholly and exclusively laid out or expended for the purposes of the trade' (that is, the brewer's trade), are nevertheless forbidden. I think that the judgment appealed against really finds facts, and does not, as it was supposed to do, rule the law, when it declares that the rents foregone are losses of annual value and not expenses of trade, that the described expenses are moneys laid out partly for the publican's trade, and, therefore, not 'wholly and exclusively' for the brewer's trade, and that such moneys enter into a computation of the profits or gains of the brewer's trade because, in the view of the Court, they also enhance the value of his goodwill" (*g*).

Miscellaneous Applications for Repayment or Adjustment.

There are a number of cases in which the taxpayer is entitled to apply for relief to Commissioners, apart from appeal against assessment. Note that a claim for any allowance or deduction, if the surveyor objects to it, is to be dealt with as an appeal (*h*). Where an overpayment of income tax under Schedule D or Schedule E, or of sur-tax, has been made owing to the assessment having been excessive by reason of the taxpayer having made a mistaken return, he may apply in writing for relief to the Commissioners of Inland Revenue within six years after the end of the year of assessment in which the assessment was made; and they are to give relief by way of repayment (*i*). This right to relief is hedged about with provisos which

(*g*) [1915] A. C. at pp. 465—7.

(*h*) Act of 1918, s. 27 (5); Act of 1927, s. 41 (3); *vide supra*, pp. 11 *sqq.*; a minor point of difference appears in *Brennan Trustees* v. *Scanlan*, *supra*, p. 383, note (*g*).

(*i*) Act of 1923, s. 24 (1), (2), *infra*, p. 564, applied to Sched. E by sect. 45 (8), and to sur-tax by sect. 42 (3) of the Act of 1927, *infra*, pp. 606, 607; the time is extended to six years by sect. 27 of the Act of 1926, *infra*, p. 579.

may (it is to be feared) go far to render it nugatory: relief is not to be given if the mistake in the return was made in accordance with the practice generally prevailing at the time when the return was made (*l*); and the Commissioners are to consider whether the granting of relief would result in the exclusion from charge of any part of the applicant's profits or income, and for this purpose to take into consideration his liability and the assessments made on him in respect of other years (*m*). An appeal lies from the decision of the Commissioners of Inland Revenue to the Special Commissioners, on giving notice in writing to the former within twenty-one days; the latter are to decide in accordance with the principles to be followed by the former (*n*). The Special Commissioners may state a case for the High Court, but only on a point of law arising in connection with the computation of profits or income (*o*); upon any question of law arising in connection with liability, apart from amount, therefore, it would appear that the decision of the Special Commissioners is to be final.

Again, a person who sustains loss in any trade or profession, or in the occupation of lands for purposes of husbandry only, or of woodlands in respect of which he has elected to be charged under Schedule D, may apply to the General or the Special Commissioners for an adjustment of his liability by reference to his loss, and to his income for the year. The application must be made within one year after the year of assessment. The Commissioners on proof to their satisfaction of the loss, and of the payment of tax, are bound to give a certificate entitling the applicant to repayment (*p*). A claim of this kind can be made only in the manner stated, and not by way of appeal (*q*); and the Commissioners in hearing such an application have no power

(*l*) Sect. 24 (2), proviso.

(*m*) Sect. 24 (3). (*n*) Sect. 24 (4), (5). (*o*) Sect. 24 (5), proviso.

(*p*) Act of 1918, s. 34, as amended by Act of 1923, s. 30 (3); *vide supra*, p. 170. And see Act of 1926, s. 33, *supra*, p. 172.

(*q*) *Grimes* v. *Lethem* (1898), 3 Tax C. 622, *supra*, p. 171. Sect. 34 is the successor of sect. 23 of the Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8); cf. *Furtado* v. *City of London Brewery*, *supra*, p. 372.

to state a case (*r*). Nor can their decision be challenged by certiorari, if they have addressed themselves to the proper question (*s*).

The Special Commissioners, again, on proof to their satisfaction, must order repayment of tax paid in respect of certain burgh customs in Scotland (*t*).

Application for repayment of tax paid on interest payable on advances by bankers, stockbrokers and discount-houses (*u*) has to be made to the Commissioners of Inland Revenue in the prescribed form; if they decide adversely to the claimant he may apply to the Special Commissioners within twenty-one days; and they decide the matter as an appeal under Schedule D; a case may be stated (*x*).

A similar procedure (*x*) applies to claims for the exemptions given by sect. 37 of the Act of 1918 to hospitals, public schools and almshouses, and to certain charitable bodies in respect of their income (*y*), and by sect. 30 of the Act of 1921 of charities in respect of lands owned and occupied by them and of trades carried on by them (*z*). On the other hand, the exemption given by sect. 38 to the British Museum (*a*), and those given by sect. 39 to friendly societies, trade unions, savings banks and so forth (*b*), are claimed before the Special Commissioners, except that the Museum Trustees and friendly societies may go before General Commissioners as regards Schedule A (*c*). The Commissioners are bound to allow the claim on proof of the facts and to issue an order for repayment. If they wrongly refuse

(*r*) *Bruce* v. *Burton* (1901), 4 Tax C. 399.

(*s*) *R.* v. *City of London Commrs.* (1904), 91 L. T. 94; *vide supra,* p. 381.

(*t*) Act of 1918, s. 35; *vide supra,* p. 157.

(*u*) Sect. 36; *vide supra,* p. 185.

(*x*) Act of 1925, s. 19, *infra,* p. 574. As to appeal and case stated, see pp. 378, 382, *supra.*

(*y*) *Vide supra,* p. 290. The allowances made under Sched. A, No. VI. are granted by the General Commissioners in making the assessment; *vide supra,* p. 293.

(*z*) The scope of sect. 30 of the Act of 1921 has been extended by sect. 24 of the Act of 1927, *vide supra,* pp. 288, 292.

(*a*) *Vide supra,* p. 295.

(*b*) *Vide supra,* pp. 296 *sqq.*

(*c*) Sect. 40; *vide supra,* p. 302. Claims under sects. 38, 39 are not affected by sect. 19 of the Act of 1925.

to do so, a writ of mandamus will issue to compel them, whether their error is one of fact or of law (*d*); and an order for costs may be made against them (*e*). Such a claim is not an appeal, and the Commissioners who hear it have no power to state a case (*f*).

Certain special allowances under Schedule A in respect of ecclesiastical matters, and of lands in Scotland, may be made by way of repayment (*g*).

The additional allowance for maintenance, repairs, &c., made under Schedule A, No. V., Rule 8, is given by repayment, but is claimed (unless the surveyor accepts the claim) by way of appeal to the General Commissioners (*h*).

Allowances for loss by flood and tempest under Schedules A and B are given by General Commissioners in the form of an abatement of the assessment (*i*), which doubtless entitles the person in question to repayment, if the tax has already been paid. Repayment is also to be made of tax overpaid under Schedule B, where the profits have fallen short of the assessable value; but in this case the claim must be made within a year after the end of the year of assessment (*k*).

In cases of succession to trade, where an adjustment of tax between predecessor and successor requires to be made, it may be claimed before General Commissioners on the surveyor's certificate; their determination is final, and is followed by repayment to the person who has overpaid (*l*).

Claims for repayment may also be made in respect of tax found to have been overpaid on the discontinuance of a trade (*m*), on a succession to a trade which is treated as a

(*d*) *Special Commrs.* v. *Pemsel,* [1891] A. C. 531, *supra,* p. 286.

(*e*) *Ex parte Dr. Barnardo's Homes,* [1920] 1 K. B. 26.

(*f*) *Garston Overseers* v. *Carlisle,* [1915] 3 K. B. 381, *supra,* p. 184, per ROWLATT, J., at p. 386.

(*g*) Sched. A, No. V. rr. 1, 3, 4, *infra,* pp. 479, 480.

(*h*) Sched. A, No. V. r. 8 (5), *infra,* p. 481; read with sect. 27 (5); *vide supra,* p. 43.

(*i*) Rule 9; Sched. B, r. 3, *infra,* p. 491.

(*k*) Sched. B, r. 6, as amended by Act of 1923, s. 30 (3), *vide supra,* p. 68.

(*l*) Sched. D, Cases I. and II. r. 9; *vide supra,* p. 168, where the restricted scope of this rule is considered.

(*m*) Act of 1926, s. 31 (1) (a); *vide supra,* p. 166.

discontinuance in consequence of a notice given by all concerned (*n*), on an account year being selected by the Commissioners of Inland Revenue for computing the profits of a trade, &c. (*o*); on a person acquiring (*p*) a source of income chargeable under Rule 1 of Case III., Case IV. or Case V. of Schedule D, or ceasing to possess such a source (*q*); and on a person acquiring, or ceasing to possess, an office or employment, or an annuity, pension or stipend, chargeable under Schedule E (*r*).

Where the business done by a non-resident person is assessed in the name of a resident on a percentage of the turnover, an appeal against the amount of percentage lies to the General or Special Commissioners; and a further reference may be required to a Board of Referees (*s*).

Applications to settle proportions of tax payable or deductible as between tenant and landlord or any other person, and between the occupier of lands and any former occupier are made to the General Commissioners, whose determination is final (*t*).

Time for claiming Repayment.

Except where it is above indicated that a shorter time is laid down (*u*), every claim for repayment must be made within six years after the end of the year of assessment to which it relates (*x*). But where income has accumulated under a will or settlement for the benefit of a person contingently upon his attaining a specified age or marrying, a claim for what may be called a deferred exemption or

(*n*) Sched. D, Cases I. and II. r. 11 (1), proviso; *vide supra*, p. 167.

(*o*) Act of 1926, s. 34 (2); *vide supra*, p. 162; as to appeal, see sub-sect. (3), *supra*, p. 374.

(*p*) Sched. D, Case III. r. 2 (1), proviso (ii); Act of 1926, s. 30, proviso (ii); *vide supra*, pp. 176, 224.

(*q*) Act of 1926, s. 30, proviso (i), read with sect. 31 (1) (a).

(*r*) Act of 1927, s. 45 (4) (iii), (5); *vide supra*, p. 256.

(*s*) General Rules, r. 9; *vide supra*, p. 277.

(*t*) Rule 22, *infra*.

(*u*) *Vide supra*, pp. 388—392.

(*x*) Act of 1918, s. 41, *infra*, p. 420, as amended by Act of 1923, s. 30, *infra*, p. 567.

abatement may be made within six years from the end of the year in which the contingency happens (*y*) by that person.

The time runs as last stated, even if the income accumulated has to be added to capital in which the claimant has a life interest only (*z*). But sect. 25 has been strictly construed; and it does not authorize a claim within the extended time where the claimant is a person other than the person on whose age or marriage the contingency depends (*a*), nor where the accumulation for the benefit of the claimant depends on a second contingency as well as his attaining some specified age or marrying (*b*). The expiry of a specified period from the death of the testator is not equivalent for this purpose to the "attaining of some specified age" by the beneficiary (*c*). Nor is that section applicable where stock is given to a child with a direction that it shall "fall due" to him "with the accruing dividends as he attains the age of twenty-one years" (*d*).

Method of Repayment.

In any of the above cases in which the claim for relief has been allowed by the General Commissioners, they will, if the tax has already been paid by deduction or otherwise, certify the particulars to the Special Commissioners, who issue an order for repayment (*e*). This procedure does not appear to be necessary where the claim has been allowed by the Special Commissioners themselves, and proof of payment is given to them.

(*y*) See last note, and Act of 1918, s. 25, *infra*, p. 410.
(*z*) *Dale* v. *Mitcalfe*, [1928] 1 K. B. 383.
(*a*) *Stoneley* v. *Ambrose* (1925), 9 Tax C. 389.
(*b*) *I. R.* v. *Bone*, [1927] S. C. 698; 13 Tax C. 20.
(*c*) *White* v. *Whitcher*, [1928] 1 K. B. 453.
(*d*) *Roberts* v. *Hanks*, [1926] W. N. 83; 10 Tax C. 351.
(*e*) Sect. 29, *infra*, p. 412. In *R.* v. *Special Commrs.* (1888), 21 Q. B. D. 313, Lord ESHER, M.R., and LINDLEY, L.J., differed as to whether the certificate is conclusive; but at any rate the onus of showing that the General Commissioners have exceeded their jurisdiction is on the party which impugns the certificate: per LINDLEY, L.J., at pp. 321—22.

No other means of securing Repayment.

The remedies open to the ratepayer for correcting an excessive assessment by way of appeal, and for securing repayment in various special cases have now been considered; there is no other means of obtaining repayment where there has been a valid assessment, even though the amount assessed is excessive in fact or in law. Petition of right will not lie in such a case (*b*). It seems probable that, if the assessment were invalid, and the Crown refused to refund the amount overpaid, a petition of right would lie. If distress is levied (*c*) in respect of an invalid assessment the subject can obtain damages in an action for unlawful distress (*d*).

(*b*) *Holborn Viaduct Land Co., Ltd.* v. *The Queen* (1887), 2 Tax C. 228; 52 J. P. 341, *supra*, p. 375. In *Hunter* v. *The King*, [1903] 1 K. B. 514; [1904] A. C. 161, such a petition was brought and decided upon (against the subject); but the Crown expressly waived the preliminary objection.

(*c*) See Chap. XVIII.

(*d*) *Berry* v. *Farrow*, [1914] 1 K. B. 632, *infra*, p. 399.

CHAPTER XVIII.

COLLECTION AND RECOVERY.

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Authority for Collection.

COLLECTION of tax is authorized when an assessment has been signed and allowed by the General Commissioners, by the delivery of a duplicate to the collector together with a warrant (*a*); and, when the assessment is made by the Special Commissioners (*b*), by the transmission to the proper officer of a certified extract; if payment is not made to him, the Special Commissioners deliver a duplicate with a warrant to the collector for the parish in which the person charged resides (*c*). In either case, the time for hearing appeals (*d*) must have expired before collection is authorized (*e*); but if the hearing of an appeal against an assessment under Schedule D has been postponed or adjourned beyond that time, any amount that is not in dispute may be collected pending the determination of the appeal (*ee*).

(*a*) Act of 1918, s. 153, *infra*, p. 448. Forms of duplicate and warrant appear in the Sixth Schedule (Nos. 5 and 6).

(*b*) *Vide supra*, p. 365.

(*c*) Sect. 154.

(*d*) *Vide supra*, p. 378.

(*e*) This is expressly provided in sect. 153 in the case of assessments allowed by the General Commissioners; and by sect. 147 the appeal provisions applicable to those assessments are applied to assessments made by the Special Commissioners; *vide supra*, p. 378.

(*ee*) Act of 1926, s. 25 (2), *infra*, p. 578.

There are special provisions for the collection of tax in public departments and offices (*f*).

If a person charged under Schedule D declares his intention of paying under a number or letter, the Commissioners may allow him to do so; but if his tax is in arrear, it will be recovered from him in the ordinary way (*g*).

The provisions as to collection and recovery of income tax are applied to sur-tax "so far as they are applicable" (*h*).

Tax, when due.

The tax (apart from what is deducted at the source) is payable in a lump sum or in instalments according to the class of persons, and the kind of profits on which it is charged (*i*). The income tax is payable in one lump sum for the year when charged—

on any person under Schedule A, except as stated below (*k*);

on any company or body of persons (except a railway company in England or Ireland) under any Schedule except No. I. of Schedule A;

on any person under Schedule B in respect of land occupied for any other purpose than husbandry (*l*);

on any person under Schedule D, Case III. (*m*), IV., V. (*n*), or VI. (*o*).

Income tax is payable in two equal instalments when charged—

on any individual or firm under Schedule B in respect of lands occupied for husbandry only (*p*);

(*f*) Sect. 155.

(*g*) Sect. 156.

(*h*) Act of 1927, s. 42 (7), *infra*, p. 601. The Special Commissioners keep the collection in their own hands; and payment is made by remittance to them or to the Accountant-General of Inland Revenue: see Regulations, *infra*, p. 616.

(*i*) Sect. 157 (1) (2), *infra*, p. 449.

(*k*) Act of 1927, s. 21, *infra*, p. 588, amending the provision last cited. See Chap. II.

(*l*) See Chap. III.

(*m*) See Chap. VII.

(*n*) See Chap. VIII.

(*o*) See Chap. IX.

(*p*) See Chap. III.

on any individual or firm in respect of the profits of any trade, profession, or vocation charged under Schedule D (*q*);

on any individual in respect of any office or employment (*r*), "except individuals whose tax is deducted at definite intervals of less than half a year" (*s*);

on any individual under Schedule A, where the annual value assessed under that Schedule is "income arising in respect of any remuneration from any office or employment of profit held" by him, or is "income from any property which is attached or forms part of the emoluments of any such office or employment" (*t*); and on a clergyman or minister in respect of the annual value of a dwelling-house occupied by him rent free in such circumstances that the annual value is treated as part of his earned income (*u*).

Income tax is paid in four quarterly payments by railway companies in England and Ireland (*v*).

Weekly wage-earners employed in manual labour are assessed half-yearly; and the tax is payable within twenty-one days after each assessment (*w*).

Where income tax is payable in one sum, it is payable on or before 1st January in the year of assessment; but if the assessment is not signed and allowed before 1st January, then it is payable on the day after it is signed and allowed (*x*).

Sur-tax is payable in one sum on or before the 1st January next after the end of the year of assessment "as a deferred instalment of income tax"; there is a similar provision to the above as to delayed assessments (*y*).

Where the tax is payable in two equal instalments, the first is payable on or before 1st January, and the second on or before the 1st July following; but if the assessment

(*q*) See Chaps. V. and VI. (*r*) See Chap. X.

(*s*) *Vide supra*, p. 258.

(*t*) Sect. 157 (2), read with Act of 1927, s. 21, and with definition of "earned income," Act of 1918, s. 14 (3) (a), (b); *vide supra*, pp. 17, 18.

(*u*) Act of 1922, s. 19, *infra*, p. 547, read with the above enactments.

(*v*) Sect. 157 (3).

(*w*) Sect. 157 (4). (*x*) Sect. 157 (1).

(*y*) Act of 1927, s. 42 (1); see Chap. XIV.

is not signed and allowed before 1st July, it is payable in one sum on the day after it is signed and allowed (*z*).

Except under Schedule D, there is no liability to pay until any appeal against the assessment has been disposed of (*a*).

Payment of tax charged under Schedule D may be made in advance, if desired, with an abatement at the rate of $2\frac{1}{2}$ per cent. per annum (*b*).

Infancy and Death.

If an infant is assessed and makes default in payment, his parent, guardian or tutor is liable to pay (*c*). If the person assessed dies before payment of tax, his executors or administrators, and in the case of an owner-occupier of lands assessed under Schedule A, his heirs or assigns also, are liable (*d*). Where, because the deceased died without making a full return (*e*), or for other reasons under recent provisions (*f*), executors or administrators are directly assessed, the tax becomes a debt due and payable by them out of the deceased's estate.

Demand and Receipt.

When the tax has become due and payable, the collector must demand it "from the persons charged therewith, or at the places of their last abode, or on the premises in respect of which the tax is charged, as the case may require" (*g*). It is only under Schedule A (*h*) and Schedule B (*i*) that the tax is charged in respect of any premises (*ii*); in the case

(*z*) Sect. 157 (2) (a).

(*a*) *Vide supra*, p. 395, note (*ee*).

(*b*) Sect. 159. Sect. 208, *infra*, p. 464, appears to apply this privilege also to tax charged under any other schedule.

(*c*) Sect. 161 (1) (a), *infra*, p. 451. If another person is assessed in the first instance in place of the infant, the liability is on that other person, apart from any default of the infant; *vide supra*, p. 274.

(*d*) Sect. 161 (1) (b), (3); *vide supra*, p. 281.

(*e*) General Rule 18, *supra*, p. 283.

(*f*) Sched. D, Cases I. and II. r. 11 (3); Act of 1926, s. 30, proviso (i), (ii), s. 31 (2), s. 34 (4); Act of 1927, s. 45 (6), (7); *vide supra*, p. 282.

(*g*) Sect. 158 (1), *infra*, p. 450.

(*h*) See Chap. II.

(*i*) See Chap. III.

(*ii*) Sched. A, No. VII. r. 4, *infra*, p. 484; Sched. B, r. 4, *infra*, p. 491; sect. 162 (1).

of tax under either of those Schedules, the demand note or the receipt must distinctly describe the property, and specify the amount of the assessment, and the rate of tax charged (*j*).

The "place of a person's last abode," or "his usual or last known place of abode" (*k*), does not necessarily mean a place of residence; it may be a "place of abode either from the business or domestic point of view"; but it must be "some place at which the notice [or demand] would be likely to be brought to his attention" (*l*). The manager of a company has not necessarily an abode at the company's office (*l*).

The collector is bound to give a receipt on payment of the tax (*m*).

Distress.

If a person neglects or refuses to pay the sum charged, distraint may be made (*n*). There are three conditions precedent to distraint: first, a notice of assessment must have been duly served, whether the assessment is an original one or an additional first assessment (*o*); secondly, the tax must have been duly demanded as above described; thirdly, unless the demand has been made from the person charged himself, and he has refused to pay, a reasonable time must have been allowed after the demand in order to admit of his making the payment required, for otherwise refusal or neglect cannot be inferred (*p*).

The collector's warrant of appointment is sufficient; and no further authority is required for the distress unless it becomes necessary to break open any house or premises,

(*j*) Sect. 158 (2). This is provided so as to assist tenants, &c. in deducting tax against landlords, &c.; *vide supra*, pp. 55 *sqq*.

(*k*) See sect. 220 (4), *infra*, p. 467.

(*l*) *Berry* v. *Farrow*, [1914] 1 K. B. 632, *supra*, p. 258; per BANKES, J., at p. 639.

(*m*) Sect. 158 (3).

(*n*) Sect. 162 (1), *infra*, p. 451. Provisions as to recovery in Scotland are contained in sect. 166 and sect. 168 (3).

(*o*) *Berry* v. *Farrow*, *supra*; see pp. 362, 364, 369, *supra*.

(*p*) *Gibbs* v. *Stead* (1828), 8 B. & C. 528. If *R.* v. *Ford* (1835), 2 Ad. & E. 588, conflicts with that case, it is submitted that the earlier decision is the sounder.

in which case a warrant must be obtained from the General Commissioners (*q*).

Distress can be levied after the year of assessment (*r*) has expired, and, it would seem, at any time until a schedule of arrears has been certified to the High Court (*s*).

Where the tax is charged under Schedule A or Schedule B, it is charged in respect of the premises (*t*), and any chattels found upon the premises can be seized, although they be the property of third parties, or implements of trade (*u*); the Law of Distress Amendment Act of 1888 does not apply (*u*); nor do those of 1895 and 1908. Under the other Schedules, however, the tax is charged upon the person and not on the premises, and it can therefore be recovered by distress upon the goods of the person charged only (*x*); his implements of trade may, however, be seized (*y*).

If lands charged under Schedule A are unoccupied, and no distress can be found thereon when the tax is payable, it may be recovered by a distress levied upon those lands at any future time, as if the occupier had been in occupation when the tax became due (*z*).

The goods seized are kept for five days at the defaulter's costs; if the tax and costs are not paid within that time, the goods are to be appraised and sold by public auction for payment of the tax, and of the costs of taking, keeping and selling the distress; the balance is returned to the owner of the goods (*a*). Where the tax due does not

(*q*) Sect. 162 (1), (2), (3). As to cases where the defaulter has removed, see sect. 168.

(*r*) *Vide supra*, p. 5.

(*s*) *Elliott* v. *Yates*, [1900] 2 Q. B. 370; sect. 176 (1) (b), *vide infra*, p. 403.

(*t*) Sect. 162 (1); see note (*m*) on p. 50. Special provisions for distress in the case of tithes and of certain other profits arising out of land (see Chap. VII., pp. 215, 216) are contained in sect. 170, *infra*, p. 456.

(*u*) *MacGregor* v. *Clamp*, [1914] 1 K. B. 288.

(*x*) See *Shaftesbury* (*Earl*) v. *Russell* (1823), 1 B. & C. 666; and per LUSH, J., [1914] 1 K. B. at p. 292. As to distraint where a wife living with her husband is separately assessed, see sect. 171.

(*y*) See *Hutchins* v. *Chambers* (1758), 1 Burrows, 579; *MacGregor* v. *Clamp*, *supra*.

(*z*) Sect. 164, *infra*, p. 452. It is submitted that this provision only applies in respect of tax which became chargeable while the land was in occupation; see remarks on *Reading* v. *Chew* (1898), 3 Tax C. 625, *supra*, p. 52.

(*a*) Sect. 162 (4), (5). Provisions as to Scotland are contained in sect. 166, *infra*, p. 453.

exceed 20*l.*, the costs are regulated by the Schedule in the Distress (Costs) Act, 1817 (*b*).

Priority over Private Seizure.

In England the goods of any person whose tax is in arrear may not be seized (except at the suit of the landlord for rent) by virtue of any execution or other legal process, unless the arrears, up to the amount due for a whole year, are first paid; if the goods are sought to be taken by virtue of any assignment without legal process, the whole arrears of tax must be paid (*c*). In Scotland such a payment will also enable a person to take the defaulter's goods by virtue of any poinding, sequestration for rent, diligence or assignation; such taking is otherwise prohibited (*d*).

Priority in Bankruptcy.

In the distribution of the property of a bankrupt, income tax assessed on the bankrupt up to the 5th April next before the date of the receiving order, and not exceeding in the whole one year's assessment, is given priority *pari passu* with certain other debts (*e*); and this provision applies as if the date of the death were the date of the receiving order, in the case of a person who dies insolvent where an administration order has been made either in bankruptcy or in Chancery (*f*). In the above cases the Crown has no other priority than that above indicated; for the provisions of the Bankruptcy Act relating to the priorities of debts are binding on the Crown (*g*), and the vesting of the bankrupt's property in the trustee prevents

(*b*) 57 Geo. 3, c. 93, applied by the Distress (Costs) Act, 1827 (7 & 8 Geo. 4, c. 17); cf. *Coster* v. *Headland*, [1906] A. C. 286.

(*c*) Sect. 163; the section is so obscure as to be incapable of consistent construction.

(*d*) Sect. 167.

(*e*) Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 33 (1) (a). Apparently, the Commissioners of Inland Revenue may select the year for the amount of whose assessment they are to have priority: *Commercial Bank of Scotland* v. *Campbell* (1923), 10 Tax C. 585.

(*f*) Sect. 33 (5), as limited by *In re Heywood*, [1897] 2 Ch. 593; and *In re Laycock*, [1919] 1 Ch. 241.

(*g*) Sect. 151.

the Crown from exercising its remedies by extent, execution or distress (*h*).

But sect. 33 (5) of the Act of 1914 does not apply to the private administration out of Court of a deceased insolvent's estate, and the Crown in such a case has a common law priority over all other debts in respect of all arrears of income tax (including sur-tax) (*i*); this priority is not limited to one year's assessment.

Priority in Winding-up, &c.

In winding-up (*k*), and when a receiver is appointed on behalf of debenture-holders secured by a floating charge, or when possession is taken by or on behalf of those debenture-holders (*l*), priority is also given to income tax *pari passu* with certain other debts. In the case of a compulsory winding-up where the company had not previously commenced to be wound up voluntarily, the priority is confined to the income tax assessed up to the 5th April next before the date of the winding-up order; and in any other case of winding-up, to the tax assessed up to the 5th April next before the date of the commencement of the winding-up (*m*). When a receiver is appointed or possession is taken, the priority is confined to tax assessed up to the 5th April next before the date of the appointment or of taking possession (*n*). In none of these cases is priority given for income tax exceeding in the whole one year's assessment (*o*).

In winding-up, the common law priority of the Crown no longer exists; it has no priority other than that which is above referred to, and with regard to any further debt due on account of income tax it ranks *pari passu* with other

(*h*) *Food Controller* v. *Cork*, [1923] A. C. 647.

(*i*) *In re Laycock, supra.*

(*k*) Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 264 (1).

(*l*) Sect. 78 (1); where the debenture contains a fixed charge as well as a floating charge, the priority arises only in respect of the assets subject to the floating charge: *In re Lewis Merthyr, &c. Collieries, Ltd.*, [1928] W. N. 141, 219.

(*m*) Sect. 264 (1) (a), read with sub-sect. (7).

(*n*) Sect. 264 (1) (a), read with sect. 78 (2).

(*o*) Sect. 264 (1) (a).

creditors (*p*). Nor would it appear to have any priority in the cases dealt with under sect. 78 (1) of the Act of 1929 other than what is given by that section.

A liquidator is bound before distributing the assets to provide for the payment of any income tax that is due (*q*).

Commitment.

If no sufficient distress can be found, the defaulter may be committed to prison under a warrant of the General Commissioners; but for this purpose ten clear days must have elapsed after the service of the demand (*r*). A parent, guardian, or tutor of an infant, and an executor or administrator of a deceased person, are equally liable to commitment with a person who has been assessed on his own account (*s*).

Schedules of Arrears and of Defaulters.

On a day appointed by the Commissioners of Inland Revenue, the collector must deliver to the surveyor a schedule of arrears verified on oath (*t*); after forty days from the time of such delivery, the Commissioners of Inland Revenue may certify the schedule to the High Court; but notice must have been given to each defaulter within the forty days, and the defaulter may pay his arrear, which must then be discharged from the schedule (*u*). The collector may not distrain for any arrears after the schedule has been so certified (*x*).

(*p*) *Food Controller* v. *Cork,* [1923] A. C. 647, *supra,* where *In re Henley* (1878), 9 Ch. D. 469, was held not to be applicable under the existing legislation; *In re Henley* was a decision with regard to income tax, and the decision in *Food Controller* v. *Cork* consequently governs the point as to income tax, though not directly concerned with it.

(*q*) *In re Watchmakers' Alliance* (1905), 5 Tax C. 117. As to the assessment of a receiver or liquidator where he carries on the trade, *vide supra,* p. 80.

(*r*) Act of 1918, s. 165, *infra,* p. 452; sect. 168 (2). These provisions apply in Scotland: see sect. 168 (3).

(*s*) Sect. 161 (1); *vide supra,* p. 398.

(*t*) Sect. 172 (1) (a), (2) (b).

(*u*) Sect. 176 (1) (a), *infra,* p. 458.

(*x*) Sect. 176 (1) (b); *Elliott* v. *Yates, supra,* p. 400.

The collector is also to deliver to the General Commissioners a schedule of deficiencies, showing (among other matters) sums unpaid owing to default (*y*), and stating that no distress can be found; so far as default is concerned, the schedule and a statement that no distress can be found must be verified on oath (*z*); the General Commissioners after examining the collector on oath, make out a schedule of defaulters, which they transmit to the Commissioners of Inland Revenue (*a*), who may certify it to the High Court (*b*).

Proceedings in High Court.

Any income tax or sur-tax charged may be recovered with costs in the High Court as a debt due to the Crown, or by any other means whereby any debt of record or otherwise due to the Crown may be sued for or recovered (*c*); it is not necessary that proceedings for distress should first have been instituted and have failed: the Crown elects by what method it will proceed (*d*). If the Crown is unsuccessful, it may be ordered to pay costs (*e*). Where the Crown proceeds by information, the respondent has no right to set off a debt claimed to be due to him from the Crown, even in respect of income tax overpaid (*ee*).

A schedule of arrears or of defaulters (*f*) delivered on oath by a collector and certified to the High Court by the Commissioners of Inland Revenue is sufficient authority to a Judge of the High Court to issue process, and sufficient evidence of the debt (*g*).

(*y*) Sect. 175 (1); no limit of time is laid down: sects. 177—184 relate to penalties, &c. upon defaulting collectors and others, and are not dealt with here, being of purely departmental interest.

(*z*) Sect. 175 (5).

(*a*) Sect. 175 (3), (4).

(*b*) Sect. 176 (2), (3), see below.

(*c*) Sect. 169 (1), *infra*, p. 456. For an exhaustive discussion of the remedies open to the Crown the reader is referred to Robertson, Civil Proceedings by and against the Crown; the subject is too large for incidental treatment.

(*d*) Sect. 169 (1). Note, however, that a schedule of defaulters cannot be certified to the High Court, nor is it an authority for the issue of process, unless it is stated on oath that no distress can be found.

(*e*) *Edinburgh Life, &c.* v. *L.-A.*, [1910] A. C. 143.

(*ee*) *A.-G.* v. *Guy Motors, Ltd.*, [1928] 2 K. B. 78.

(*f*) See above.

(*g*) Sect. 176 (2), (3), *infra*, p. 458.

Amounts under 50l.

Where the amount due under any assessment is less than 50*l.* it may (in addition to any other remedy) be recovered summarily as a civil debt; proceedings are commenced in the name of the collector; and a written statement signed by or on behalf of the employer is *primâ facie* evidence of wages, salaries, fees and other emoluments paid to the person charged (*h*).

Weekly Wage-Earners.

Provision for the collection of the income tax due from weekly wage-earners (*i*) assessed half-yearly is made in the regulations dealing with such assessments (*k*). The tax may be recovered by distress in the same way as in the case of an ordinary assessment (*l*). It may also be recovered summarily as a civil debt (*m*), proceedings being commenced in the name of the collector (*n*). In any proceedings for recovery a written statement signed by or on behalf of the employer is *primâ facie* evidence of the wages paid (*o*).

(*h*) Act of 1924, s. 30, *infra,* p. 570. As regards Northern Ireland, see Act of 1928, s. 22, *infra,* p. 613.

(*i*) *Vide supra,* p. 367.

(*k*) *Vide infra,* pp. 619—621; see sect. 131, *infra,* p. 438.

(*l*) Regulation 21.

(*m*) Sect. 169 (2), *infra,* p. 456; see Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 35, read with sect. 6; and see note (*h*), *supra.*

(*n*) Regulation 28.

(*o*) Finance Act, 1921, s. 29, *infra,* p. 542.

APPENDIX.

THE INCOME TAX ACTS (*a*).

THE INCOME TAX ACT, 1918.

(8 & 9 Geo. 5, c. 40.)

An Act to Consolidate the Enactments relating to Income Tax.

[8th August, 1918.]

Part I.—Charge of Income Tax.

1. Where any Act enacts that income tax shall be charged for any year at any rate, the tax at that rate shall be charged for that year in respect of all property, profits, or gains respectively described or comprised in the schedules marked A, B, C, D, and E, contained in the First Schedule to this Act and in accordance with the Rules respectively applicable to those schedules (*b*).

2. Every assessment and charge to tax shall be made for a year commencing on the sixth day of April and ending on the following fifth day of April, except where under the provisions of this Act weekly wage-earners are to be assessed and charged quarterly.

3. The due proportion of tax shall be charged for every fractional part of twenty shillings, but no tax shall be charged of a lower denomination than one penny.

Part II.—Super-tax (*c*).

Part III.—Exemption, Abatement, and Relief.

9. (*Relief from tax based on total income*) (*d*).

10. (*Exemption.*)

11. (*Abatement.*)

12. (*Relief in respect of children.*)

13. (*Relief in respect of wife and certain relatives.*)

14. (*e*). . . . . .

(*a*) See Finance Act, 1919, s. 28.

(*b*) See Act of 1926, s. 22 (1), *infra*.

(*c*) Repealed as from 6th April, 1929, Act of 1927, s. 47, and Sixth Sched., Part I.

(*d*) Sects. 9—13 repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

(*e*) Sub-sects. (1) and (2) repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

(3) For the purposes of this section the expression "earned income" means (*i*)—

(a) any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay, or not; and

(b) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual, and

(c) any income which is charged under Schedule B. or Schedule D., or the rules applicable to Schedule D., and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession, or vocation, either as an individual, or, in the case of a partnership, as a partner personally acting therein.

(4) In cases where the profits of a wife are deemed to be profits of the husband, any reference in this section to the individual includes either the husband or the wife.

15. (*Relief in respect of unearned income*) (*k*).

16. Except as otherwise provided, any *allowance or deduction* (*l*) shall be given either by discharge or reduction of the assessment, or by repayment of the excess which has been paid, or by all or any of those means, as the case may require.

17. A claimant shall not be entitled to *allowance or deduction* (*m*) in respect of any income the tax on which he is entitled to charge against any other person, or to deduct, retain, or satisfy out of any payment which he is liable to make to any other person.

18. Where an assessment has become final and conclusive for the purposes of tax for any year of assessment, that assessment shall also be final and conclusive in estimating total income from all sources for the purposes of *the Income Tax Acts* (*n*), and no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in estimating such total income from all sources for such purposes unless that allowance or adjustment has been previously made on an application under the special provisions of this Act relating thereto.

(*i*) Applied and extended, Finance Act, 1920, s. 33; see also Act of 1925, s. 14.
(*k*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.
(*l*) Reference substituted, Finance Act, 1920, s. 32, and Third Sched.
(*m*) Words substituted, *ibid.* (*n*) Words substituted, *ibid.*

19. For the purpose of *any claim for an allowance or deduction* (*l*), the income arising from the ownership of lands, tenements, hereditaments, or heritages *assessable under Schedule A.* (*m*) shall, subject to any allowance, reduction, or relief granted under this Act, be deemed to be the annual value thereof estimated in accordance with the rules applicable to Schedule A. and the income arising from the occupation of lands, tenements, hereditaments and heritages *assessable under Schedule B.* (*m*) shall, subject to any allowance, reduction or relief granted under this Act, be deemed the assessable value thereof estimated in accordance with the rules applicable to Schedule B., and where a claimant is both owner and occupier *of the last-mentioned lands, tenements, hereditaments and heritages* (*m*), the amount of the annual value under Schedule A., added to the amount of the assessable value under Schedule B., shall be deemed to be the income arising from those lands, tenements, hereditaments or heritages.

20. The following persons having joint interests, that is to say,—

(a) coparceners, joint tenants, or tenants in common of the profits of any property; and

(b) joint tenants, or tenants of land or tenements in partnership, being in the actual and joint occupation thereof in partnership, who are entitled to the profits thereof in shares; and

(c) partners carrying on a trade, profession or vocation together who are entitled to the profits thereof in shares,

may claim *any allowance or deduction* (*l*) according to their respective shares and interests, and any such claims which are proved to the satisfaction of the commissioners to whom they are made, may be dealt with in the same manner as in the case of several interests:

Provided as follows:—

(i) Profits arising from the occupation of lands shall not be separately charged if the lands are let or underlet without the lessor relinquishing the possession thereof or if the lessee is not exclusively in the possession and occupation of the lands;

(ii) The income of a partner from a partnership carrying on any trade, profession, or vocation shall be deemed to be the share to which he is entitled during the year to which the claim relates, in the partnership profits, such profits being estimated according to the several rules and directions of this Act.

21. (*Relief in respect of separate business of a married woman*) (*n*).

22.—(1) In the case of weekly wage-earners to whom the provisions of this Act as to half-yearly assessment apply, the assessment and charge of tax in each half-year shall not affect the grant of any *allowance or*

(*l*) Reference substituted, Finance Act, 1920, s. 32, and Third Sched.

(*m*) Words inserted, Act of 1926, s. 36, and Fourth Sched.

(*n*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

deduction (*r*) which is dependent wholly or partially on total annual income; and any such exemption, abatement or relief shall be given in cases where the tax is assessed and charged quarterly under this Act, as if the total wages on which the tax is charged and the total tax charged for the four quarters of the year were respectively the total income for the year from the wages and the total tax charged for the year in respect of the wages.

(2) The Commissioners of Inland Revenue may, however, if they think fit in any case, in accordance with regulations made by them, allow any such exemption, abatement or relief by way of reduction of the quarterly assessment or repayment of the quarterly tax.

23. Where relief has been granted for any year of assessment under any provisions of this Act providing for the reduction of an assessment on any source of income in cases where the profits of the year of assessment fall short, or in cases of deprivation of or loss of profits or gains from some specific cause, the amount of the assessment as reduced shall be deemed to be the income from that source in ascertaining the total income from all sources for that year for the purpose of any claim for *allowance or deduction* (*s*).

24. (*Restriction of tax when margin of income above a certain limit is small*) (*t*).

25. Where in pursuance of the provisions of any will or settlement any income arising from any fund is accumulated for the benefit of any person contingently on his attaining some specified age or marrying, and the aggregate amount in any year of assessment of that income and the income from any other fund subject to the like trusts for accumulation and of the total income of that person from all sources (hereinafter referred to as "the aggregate yearly income") is of such an amount only as would entitle an individual either to total exemption from tax or to relief from tax, that person shall, on making a claim for the purpose within three (*u*) years after the end of the year of assessment in which the contingency happens, be entitled, on proof of the claim in manner prescribed by this Act, to have repaid to him on account of the tax which has been paid in respect of the income during the period of accumulation a sum equal to the aggregate amount of relief to which he would have been entitled if his total income from all sources for each of the several years of the said period had been equal to the aggregate yearly income for that year; but in calculating that sum a deduction shall be made in respect of any relief already received.

26. (*No relief where individual not resident in the United Kingdom* (*x*).

(*r*) References substituted, Act of 1920, s. 32, and Third Sched.; Act of 1925, s. 18.

(*s*) Words substituted, see note (*r*).

(*t*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

(*u*) Extended to six years by Act of 1923, s. 30 (2).

(*x*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.; see now Act of 1920, s. 24.

27.—(1) Any person who claims *any allowance or deduction* (*y*) shall, within the time limited by this Act for the delivery of lists, declarations, and statements, or within such further time as the general commissioners for the division may for any special reason allow, deliver to the assessor of the parish in which he resides, a notice of his claim, together with a declaration and statement in the prescribed form, signed by him, setting forth—

(a) all the particular sources from which his income arises, and the particular amount arising from each source;

(b) all particulars of any yearly interest or other annual payments, reserved or charged thereon, whereby his income is or may be diminished; and

(c) all particulars of sums which he has charged or may be entitled to charge on account of tax against any other person, or which he has deducted, or may be entitled to deduct, out of any payment to which he is or may be liable.

(2) Any surveyor may examine every such declaration and statement and take copies of or extracts from the same.

(3) The assessor shall transmit to the commissioners the notice of claim and the declaration and statement.

If the surveyor does not within forty days after the transmission or within such further time as the commissioners on just cause may allow, make an objection to the claim, the commissioners may allow the claim.

(4) If it appears that any property or profits of the claimant are charged, or are liable to be charged, in some other division, the commissioners shall certify the allowance, in the prescribed form, to the Commissioners of Inland Revenue, who shall direct the appropriate relief to be given in that other division.

(5) If the surveyor objects in writing to such claim stating that he has reason to believe that the income of the claimant, or any other particulars in the declaration or statement of the claimant, are not truly or fully set forth in any specified particular, the claim shall be heard and determined by way of appeal by the general commissioners, in like manner as other appeals under this Act and with the like liability to penalties, and if the claim is allowed the commissioners shall grant and issue all necessary certificates accordingly.

28.—(1) All claims *for any allowance or deduction* (*y*) shall be made and proved before the general commissioners for the division in which the claimant resides, pursuant to the powers and provisions under which tax under Schedule D. is ascertained and charged, and whether he be personally charged in that division or not.

(2) If the whole income of the claimant arises from an office or employment of profit, or from a pension or stipend under the jurisdiction of the commissioners of a department or office, the claim may be made to and allowed by those commissioners.

(*y*) Reference substituted, Finance Act, 1920, s. 32, and Third Sched.

(3) If a claimant is not within the United Kingdom, an affidavit stating the particulars required by this Act, and taken before any person who has authority to administer, in the place where the claimant resides, an oath with regard to any matter relating to the public revenue of the United Kingdom, may be received by the respective commissioners.

(4) If satisfactory proof is given to the commissioners that a claimant is unable to attend in person, a claim on his behalf may be made by any guardian, trustee, attorney, agent or factor acting for him.

(5) Where a person is assessable on behalf of any other person, he may make a claim as aforesaid on behalf of that other person.

29.—(1) If it is proved to the satisfaction of the general commissioners that any person whose claim for *allowance or deduction* (*a*) or relief has been allowed, has paid any tax, by deduction or otherwise, the general commissioners may, in the form prescribed, certify the facts proved before them to the special commissioners.

(2) The certificate of the general commissioners shall state the particulars of the different sources of income in respect of which tax has been paid, the relief to which the claimant is entitled, the amount repayable in respect thereof, and the name and place of abode of the claimant.

(3) On receipt of the certificate, the special commissioners shall issue an order for repayment.

30.—(1) A person who in making a claim for or obtaining any *allowance or deduction* (*b*), or in obtaining any certificate as aforesaid—

(a) is guilty of any fraud or contrivance; or

(b) fraudulently conceals or untruly declares any income or any sum which he has charged against or deducted from, or was entitled to charge against or deduct from another person; or

(c) fraudulently makes a second claim for the same cause,

shall forfeit the sum of twenty pounds and treble the tax chargeable in respect of all the sources of his income and as if such claim had not been allowed.

(2) A person who knowingly and wilfully aids or abets any person in committing an offence under this section shall forfeit the sum of fifty pounds (*c*).

31. (*Right of husband and wife to claim relief separately*) (*d*).

Relief in respect of Insurance, Losses, and Certain Payments.

32.—(1) Any person—

(a) who has made an insurance on his life or the life of his wife, or who has contracted for any deferred annuity on his own life or the life of his wife, with any insurance company,

(*a*) Words substituted, Finance Act, 1920, s. 32, and Third Sched.

(*b*) Reference substituted, see note (*a*).

(*c*) Increased to £500 by s. 23 (3) of the Act of 1923.

(*d*) Repealed, Finance Act, 1920, s. 64 (3), *and* Fourth Sched.; see now Act of 1920, s. 25.

legally established in the United Kingdom or in any British Possession, or lawfully carrying on business in the United Kingdom, or with a registered friendly society, or, in the case of a deferred annuity, with the National Debt Commissioners; and

(b) *who (e) is under any Act of Parliament or under the terms or conditions of his employment liable to the payment of any sum or to the deduction from his salary or stipend of any sum for the purpose of securing a deferred annuity to his widow or provision for his children after his death;*

shall, subject as hereinafter provided, be entitled to have the amount of tax payable by him reduced by a sum representing tax at the appropriate rate on the amount of the premium paid by him for any such insurance or contract or on the amount of the sum paid by him or deducted from his salary or stipend.

For the purposes of this section, the expression "appropriate rate" means—

(i) *where the total income of the claimant from all sources estimated in accordance with the provisions of the Income Tax Acts does not exceed one thousand pounds, half the standard rate of tax:*

(ii) *where the total income of the claimant from all sources estimated as aforesaid exceeds one thousand pounds but does not exceed two thousand pounds, three-fourths of the standard rate of tax:*

(iii) *where the total income of the claimant from all sources estimated as aforesaid exceeds two thousand pounds, the standard rate of tax.*

(2) If any such person is charged to tax under any Schedule and has paid that tax, or has paid or has been charged with tax by deduction or otherwise, he shall, on a claim being made to the special commissioners, and on production to them of the receipt for his (*f*) payment, and proof of the facts to their satisfaction, be entitled to repayment of tax on the amount thereof *at the appropriate rate* (*g*).

(3) No such allowance—

(a) shall be made in respect of any such amounts beyond one-sixth of the total (*h*) income of the person from all sources estimated in accordance with *the provisions of the Income Tax Acts* (*i*);

(b) . . . (*k*);

(*e*) Words to end of sub-sect. (1) substituted by Finance Act, 1920, s. 26 (1).
(*f*) Word "annual" omitted, Finance Act, 1920, s. 32, and Third Sched.
(*g*) Words added, Finance Act, 1920, s. 26 (2).
(*h*) Word "chargeable" omitted, Finance Act, 1920, s. 32, and Third Sched.
(*i*) Words substituted, *ibid.*
(*k*) Paragraph (b) omitted, *ibid.*

(c) shall exceed, in respect of any premium or other payment payable on a policy for securing a capital sum on death (whether in conjunction with any other benefit or not), *the amount of the tax calculated at the appropriate rate on an amount equal to* (*l*) seven per cent. of the actual capital sum assured, and in calculating any such capital sum, no account shall be taken of any sum payable on the happening of any other contingency, or of the value of any premiums agreed to be returned, or of any benefit by way of bonus, or otherwise, which is to be or may be received either before or after death, either by the person paying the premium, or by any other person, and which is not the sum actually assured;

(d) shall *in any case exceed the amount of the tax calculated at the appropriate rate on one hundred pounds* (*m*) in respect of any premiums or payments to which this section applies and which are payable for securing any other benefits than as last aforesaid;

(e) shall, as regards insurances or contracts for deferred annuities made after the twenty-second day of June, nineteen hundred and sixteen,

(i) be given at a greater rate of tax than *half the standard* rate of tax (*n*);

(ii) be given except in respect of premiums or other payments payable on policies for securing a capital sum on death, whether in conjunction with any other benefit or not; or

(iii) be given in respect of premiums or payments payable during the period of deferment in respect of a policy of deferred assurance:

Provided that the two last-mentioned restrictions shall not affect premiums or payments payable on policies or contracts made in connection with any superannuation or bonâ fide pension scheme for the benefit of the employees of any employer or of persons engaged in any particular trade, profession, vocation or business, *or for the benefit of the wife or widow of any such employee or person or of his children or other dependants* (*o*), or on any policy taken out by a teacher in a secondary school pending the establishment of a superannuation or pension scheme for those teachers.

(4) . . . . (*p*).

(5) War insurance premiums shall not be taken into account in calculating the aforesaid limits of one-sixth of the total income from all sources, or of seven per cent., or of one hundred pounds.

(*l*) Words inserted, Finance Act, 1920, s. 26 (3).
(*m*) Words substituted, sect. 26 (4).
(*n*) Words substituted, sect. 26 (5). (*o*) Words inserted, sect. 26 (6).
(*p*) Sub-sect. (4) omitted, Finance Act, 1920, s. 32, and Third Sched.

(6) In this section the expression "war insurance premiums" means any additional premium or other sum paid in order to extend an existing life insurance policy to risks arising from war or war service abroad, and any part of any premium or other sum paid in respect of a life insurance policy covering those risks, or either of them, which appears to the commissioners to whom the claim for relief is made to be attributable to those risks, or either of them.

(7) Where premiums in respect of any insurance effected with a registered friendly society are made payable for shorter periods than three months, a person who claims relief under this section must, in order to obtain relief, produce to the surveyor a certificate, signed by an officer of the society, specifying the correct amount of premiums paid during the year of assessment.

A person who wilfully gives or produces a false certificate shall forfeit the sum of fifty pounds.

(8) (*q*) *Where a premium is paid by a wife out of her separate income in respect of an insurance on her own life or the life of her husband or a contract for any deferred annuity on her own life or the life of her husband, the same allowance of tax shall be made as if the premium were a premium paid by her husband for an insurance on his own life or for a contract for a deferred annuity on his own life, and this section shall apply accordingly.*

(9) (*q*) *Where the tax ultimately payable by any person after deducting the allowance under this section is greater than the amount of tax which would be payable if the total income of that person exceeded one thousand pounds or two thousand pounds, as the case may be, the allowance under this section shall be increased by a sum representing the amount by which tax at one-fourth of the standard rate on the amount of the premiums or payment in respect of which the allowance is made exceeds the amount of the tax at the standard rate on the amount by which the total income falls short of one thousand pounds or two thousand pounds, as the case may be.*

33.—(1) Where an assurance company carrying on life assurance business, or any company whose business consists mainly in the making of investments, and the principal part of whose income is derived therefrom, or any savings bank or other bank for savings, claims and proves to the satisfaction of the special commissioners that, for any year of assessment, it has been charged to tax by deduction or otherwise, and has not been charged in respect of its profits in accordance with the rules applicable to Case I. of Schedule D., the company or bank shall be entitled to repayment of so much of the tax paid by it as is equal to the amount of the tax on any sums disbursed as expenses of management (including commissions) for that year:

Provided that—

(a) relief shall not be given under this section so as to make the tax paid by the company or bank less than the tax which

(*q*) Sub-sects. (8) and (9) added, Finance Act, 1920, s. 26 (7).

would have been paid if the profits had been charged in accordance with the said rules; and

(b) the amount of any fines, fees, or profits arising from reversions in the case of an assurance company, and, in the case of any other company or any such bank, the amount of any income or profits derived from sources not charged to tax, shall be deducted from the amount treated as expenses of management for the year; and

(c) in calculating profits arising from reversions, the company may set off against those profits any loss arising from reversions for any previous year during which any enactment granting this relief was in operation.

(2) Notice of any claim to the special commissioners under this section, together with the particulars thereof, shall be given in writing to the surveyor within twelve months after the expiration of the year of assessment in respect of which the claim is made, and where the surveyor objects to such claim the special commissioners shall hear and determine the same in like manner as in the case of an appeal to them against an assessment under Schedule D., and the provisions of this Act relating to the statement of a case for the opinion of the High Court on a point of law shall apply.

(3) A company or bank shall not be entitled to any relief under this section in respect of any expenses as to which relief may be claimed or allowed under rules 7 and 8 of No. V. of Schedule A.

(4) Where an assurance company, not having its head office in the United Kingdom, is charged under Case III. of Schedule D., on a proportion of the income from the investments of its life assurance fund, or on a basis substituted therefor, the relief in respect of expenses of management shall be calculated by reference to a like proportion of its total expenses of management for the year, estimated according to the provisions of this Act.

(5) Where income arising from the investments of the foreign life assurance fund of an assurance company has been relieved from tax in pursuance of the provisions of this Act, a corresponding reduction shall be made in the relief granted under this section in respect of the expenses of management.

34.—(1) Where any person sustains a loss in any trade, profession, employment or vocation, carried on by him either solely or in partnership, or in the occupation of lands for the purpose of husbandry only, or in the occupation of woodlands in respect of which he has elected to be charged to tax under Schedule D., he may upon giving notice in writing to the surveyor within six months (*r*) after the year of assessment, apply to the general commissioners or to the special commissioners, for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year estimated according to this Act.

(*r*) Extended to one year, Act of 1923, s. 30 (3).

(2) The commissioners shall, on proof to their satisfaction of the amount of the loss, and of the payment of tax upon the aggregate amount of income, give a certificate authorising repayment of so much of the sum paid for tax as would represent the tax upon income equal to the amount of loss, and the certificate may extend to give any exemption, abatement, or relief depending upon total income from all sources, authorised by this Act.

Upon the receipt of the certificate the Commissioners of Inland Revenue shall cause repayment to be made in conformity therewith.

(3) If any person shall be guilty of any fraud or contrivance in making any application under this section, or in obtaining any such adjustment or certificate as aforesaid, he shall forfeit the sum of fifty pounds.

(4) Where repayment has been made to a person for any year under this section, he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such repayment has been obtained.

35. Where in any burgh in Scotland tolls commonly known by the name of customs are levied under the authority of any Act of Parliament or charter, and are applied and expended in the burgh in defraying the expenses of paving, lighting, or cleansing the same, or of the police thereof, or in discharging any other similar public burdens, any tax which has been charged and paid in respect of any such tolls shall, as regards so much of the tolls as shall have been expended as aforesaid, be repaid on due proof of the necessary facts to the satisfaction of the special commissioners.

36.—(1) Where interest payable in the United Kingdom on an advance from a bank carrying on a bonâ fide banking business in the United Kingdom is paid to the bank without deduction of tax out of profits or gains brought into charge to tax, the person by whom the interest is paid shall be entitled, on proof of the facts to the satisfaction of the special commissioners, to repayment of tax on the amount of the interest.

(2) A like repayment shall on the like proof be made in the case of interest (not being yearly interest) payable in the United Kingdom on an advance from a person who in the opinion of the Commissioners of Inland Revenue is bonâ fide carrying on business as a member of a stock exchange in the United Kingdom, or from any person who in the opinion of the said commissioners is bonâ fide carrying on the business of a discount house in the United Kingdom:

Provided that no repayment shall be made unless the Commissioners of Inland Revenue are satisfied that the interest has been or will be brought into account in the statement delivered or to be delivered for the purposes of income tax by the person making the advance.

Relief to Charities, Friendly Societies, &c.

37.—(1) Exemption shall be granted—

(a) from tax under Schedule A in respect of the rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only (*rr*):

Provided that any assessment upon the respective properties shall not be vacated or altered, but shall be in force and levied, notwithstanding the allowance of any such exemption;

(b) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, and from tax under Schedule D, in respect of any yearly interest or other annual payment forming part of the income of a body of persons or trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only;

(c) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, in the names of trustees applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, and so far as the same are applied to those purposes.

38. The trustees of the British Museum shall be granted exemption from tax under Schedule A in respect of the lands and tenements vested in them, and shall also be granted the like exemptions in respect of any dividends of stock vested in them, or in any other person for their use, as are granted to charitable institutions under this Act (*rr*).

39.—(1) An unregistered friendly society whose income does not exceed one hundred and sixty pounds shall be entitled to exemption from tax, and a registered friendly society which is precluded, by Act of Parliament or by its rules, from assuring to any person a sum exceeding three hundred pounds by way of gross sum, or fifty-two pounds a year by way of annuity, shall be entitled to exemption from tax under Schedules A, C, and D (*rr*).

(2) A registered trade union which is precluded, by Act of Parliament or by its rules, from assuring to any person a sum exceeding three hundred pounds by way of gross sum, or fifty-two pounds a year by way of annuity, shall be entitled to exemption from tax under Schedules A, C, and D in respect of its interest and dividends which are applicable and applied solely for the purpose of provident benefits (*rr*).

(*rr*) See Act of 1926, s. 28, proviso.

The expression "provident benefits" includes any payment, expressly authorised by the registered rules of the trade union, which is made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member, or the wife of a member, or as provision for the children of a deceased member.

(3) (a) Any savings bank certified under the Savings Bank Act, 1863, shall be entitled to exemption from tax in respect of its interest and dividends arising from investments with the National Debt Commissioners.

(b) Any savings bank, whether certified under the Savings Bank Act, 1863, or not, shall be entitled to exemption from tax under Schedules C and D in respect of the income of its funds, so far as such income is applied in the payment or credit of interest to any depositor.

Provided as follows:—

(i) *any such interest shall be chargeable under Case III. of Schedule D* (*s*); and

(ii) *where in the year for which exemption is claimed by the bank, the interest paid or credited to any depositor out of the income of its funds, other than interest and dividends arising from investments with the National Debt Commissioners exceeds the sum of fifteen pounds* (*t*), the bank and any branch thereof shall make a return to the surveyor for the district in which the bank or branch is situate of the name and place of residence of every depositor to whom any such sum has been paid or credited, and of the amount thereof, and unless such returns are duly made, the bank shall not be entitled to any relief in respect of any such sums. Any such return shall be made on or before the first day of May in the year following that in respect of which exemption is claimed.

(4) A society registered under the Industrial and Provident Societies Act, 1893, shall be entitled to exemption from tax under Schedules C and D, unless it sells to persons not members thereof, and the number of its shares is limited by its rules or practice, but no member of or person employed by the society shall be exempt from charge to the tax to which he would otherwise be liable.

(5) An approved society within the meaning of Part I. of the National Insurance Act, 1911, and any branch of such a society, shall be entitled to exemption in respect of the income derived from any funds or credits of the society under that Part of that Act, or any investment thereof, and the Insurance Commissioners, the Scottish Insurance Commissioners, the

(*s*) Substituted, Finance Act, 1920, s. 32, and Third Sched.
(*t*) Words substituted, Act of 1924, s. 24.

Irish Insurance Commissioners, and the Welsh Insurance Commissioners, shall be entitled to a similar exemption in respect of any income derived from any funds held by them, or under their control or management, under or for the purposes of that Act.

Any such exemption shall be in addition to and not in derogation of any other exemption.

(6) An insurance committee established under Part I. of the National Insurance Act, 1911, shall in respect of income derived from any funds or credits of the committee under the National Insurance (Health) Acts, 1911 to 1918, or any investment thereof, and the trustees of the special fund constituted by subsection (6) of section forty-eight of the National Insurance Act, 1911, as amended by the National Health Insurance Act, 1918, shall in respect of income derived from that fund, be entitled to exemption from tax, and the National Health Insurance Joint Committee shall be entitled to a similar exemption in respect of any income derived from any funds held by that committee or under the control or management of that committee under or for the purpose of the National Insurance (Health) Acts, 1911 to 1918.

Any such exemption shall be in addition to and not in derogation of any other exemption.

40.—(1) Any claim under the last three preceding sections shall be made to the special commissioners in writing, in such form as may be prescribed by the Commissioners of Inland Revenue, and the special commissioners on proof of the facts to their satisfaction shall allow such claim accordingly:

Provided that any claim under section thirty-eight or any claim under subsection (1) of section thirty-nine of this Act as to tax under Schedule A may be made to the general commissioners.

(2) The special commissioners shall require every such claim to be verified by affidavit, and proof of the claim may be given by the treasurer, trustee, or any duly authorised agent, on affidavit made before a general or additional commissioner for the division in which such person resides.

(3) Where the special commissioners allow a claim they shall issue an order for repayment.

(4) A person who makes a false or fraudulent claim for exemption under the said sections in respect of any interest, annuities, dividends or shares of annuities charged or chargeable under Schedule C shall forfeit the sum of one hundred pounds, and if such claim is made by any person in his own behalf he shall in addition be liable to be charged in treble the tax so chargeable.

41. Save as hereinbefore provided in the case of income accumulated until the happening of a contingency, no claim for repayment of tax under this Act shall be allowed unless it is made within three (*u*) years next after the end of the year of assessment to which it relates (*v*).

(*u*) Extended to six years, Finance Act, 1923, s. 30 (1).
(*v*) See Finance Act, 1919, s. 17.

PART IV.—SPECIAL PROVISIONS.

42. (*Reduced rates of tax and other relief applicable to the service pay of sailors, soldiers, and others*) (*w*).

43. (*Relief in respect of diminution of profits or gains due to the war*) (*x*).

44. (*Relief where income of year falls short of assessed income by more than ten per cent.*) (*y*).

45. (*Limit to relief in respect of insurance premiums to be calculated by reference to pre-war income*) (*z*).

46.—(1) Where the Treasury have before the commencement of this Act issued or may thereafter issue any securities which they have power to issue for the purpose of raising any money or any loan, with a condition that the interest thereon shall not be liable to tax or super-tax, so long as it is shown, in manner directed by the Treasury, that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest of securities issued with such a condition shall be exempt accordingly (*a*).

(2) Where securities so issued for the time being form part of the investments of the foreign life assurance fund of an assurance company, the income arising from those securities, if applied for the purposes of that fund or re-invested so as to form part of that fund, shall not be liable to tax.

(3) Where the special commissioners are satisfied that any income arising abroad from the investments of the foreign life assurance fund of an assurance company has been remitted to the United Kingdom and invested, as part of the investments of that fund, in any such securities issued as aforesaid, that income shall not be liable to tax, and any tax paid thereon shall, if necessary, be repaid to the company.

(4) Where any securities have before the commencement of this Act been issued or are hereafter issued in the United States of America by a municipal corporation, county council or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, the securities, if issued under the authority of the Treasury, shall not be liable to tax or super-tax, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom.

The expression "local authority" in this subsection includes the Metropolitan Water Board and any other public body which is recognised as a local authority for the purposes of this subsection by the Local Government Board.

(*w*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.
(*x*) Repealed, Finance Act, 1921, s. 25.
(*y*) Repealed, Finance Act, 1921, s. 25.
(*z*) This provision appears to be now obsolete.
(*a*) As to appeal, see Act of 1924, s. 27.

47.—(1) The accumulated interest payable in respect of any war savings certificate issued by the Treasury through the Post Office, under which the purchaser, by virtue of an immediate payment of fifteen shillings and sixpence, becomes entitled after five years to receive the sum of one pound, shall not be liable to tax so long as the amount of the certificates held by the person who is for the time being the holder of the certificate, does not exceed the amount which an individual is for the time being authorised to hold under regulations made by the Treasury (*b*).

(2) Where the currency of any war savings certificate has been extended under *any Act* (*c*), the foregoing provisions of this section shall apply with respect to any interest payable in respect of the certificate for the period after the expiration of five years from the date on which it was issued up to the date on which it is repaid or redeemed as it applies to the said accumulated interest.

48.—(1) Where any securities have been issued in connection with any Government loan raised for the purposes of the present war and such securities were issued subject to the condition that the interest thereon should be exempt from assessment to tax, but should not be exempt from super-tax, the interest on the securities shall be exempt from assessment to tax, but shall not be exempt from super-tax.

(2) The interest on any such securities shall, for the purposes of super-tax and for the purposes of any relief from tax which depends on the total income from all sources, be treated as part of the total income from all sources as if the amount actually received represented net income after deduction of tax at the *standard rate* (*cc*); but nothing in this provision shall be construed as entitling any person to the repayment of any sum on account of tax on the ground that he is to be treated as having paid tax at such rate as aforesaid on the interest so exempt.

49.—(1) The interest on any stock inscribed in the Post Office Stock Register under the provisions of the War Loan (Supplemental Provisions) Act, 1915, where the stock does not exceed the nominal amount of two hundred pounds shall be paid without deduction of tax, but any such interest shall be chargeable under Case III. of Schedule D.

(2) The Treasury may direct that any Exchequer bonds, issued under their authority during the continuance of the present war and a period of six months thereafter, and any securities issued under the War Loan Acts, 1914 to 1917, or any Act amending those Acts shall be issued, or shall be deemed to have been issued, subject to the condition that the interest on the bonds and securities shall be paid without deduction of

(*b*) This includes a reference to any national savings certificates issued by the Treasury through the Post Office Savings Bank Act, 1920 (10 & 11 Geo. 5, c. 12), s. 7. See Finance Act, 1922, s. 28.

(*c*) Words substituted by Finance Act, 1919, s. 24.

(*cc*) Words substituted, Act of 1927, s. 46, and Fifth Sched., Part III.

tax, and the interest shall be so paid accordingly, but any such interest shall be chargeable under Case III. of Schedule D.

(3) Where interest on any securities issued in connection with any Government loan raised for the purposes of the present war is paid without deduction of tax, any person by whom such interest is paid, and any person who receives on behalf of any other person being a registered or inscribed holder of any such security any interest so paid without deduction of tax, and any person who has acted as intermediary in the purchase of any securities on which the interest is payable without deduction of tax shall, on being so required by the Commissioners of Inland Revenue, furnish to them—

(i) the names and addresses of the persons to whom such interest has been paid or on whose behalf such interest has been received or on whose behalf such securities have been purchased;

(ii) the amount of the interest so paid or received, or the amount of the securities so purchased.

50. (*Provision for postponement of payment of super-tax when income has diminished*) (*d*).

51. Where it is proved to the satisfaction of the special commissioners—

(a) that any individual, in connection with the present war, is or has been, during any year of assessment, serving as a member of any of the military or naval forces of the Crown or of the Air force, or in any work abroad of the British Red Cross Society, or the Saint John Ambulance Association, or any other body with similar objects; and

(b) that the total income of that individual from all sources for that year is or was less than his total income from all sources for the previous year;

the total income of that individual from all sources for the purposes of super-tax for that year shall be taken to be his total income from all sources for that year, estimated in the same manner as, under this Act, his total income for the previous year is required to be estimated for the purposes of super-tax, and where the tax has been paid repayment shall be made accordingly.

52. (*Definition of naval, military, and Air force service*) (*d*).

53.—(1) Where, in calculating for the purposes of Part II. of the Munitions of War Act, 1915, the profits of a controlled establishment, a deduction has been allowed under that Part of that Act, or rules made thereunder, in respect of exceptional depreciation or obsolescence of buildings, plant or machinery, and the sums so deducted have not been deducted or allowed in computing the amount upon which tax has been paid in respect of those profits, there shall be allowed a repayment of tax equal to the amount of the tax at the rate at which that tax has been paid, on the amount of the sums so deducted:

(*d*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

Provided that the repayment of tax under this section—

(a) shall be made in respect of the year of assessment which includes the end of the period of assessment in respect of which the said deductions have been allowed under the Munitions of War Act, 1915; and

(b) shall be deemed to have effected a reduction of the income tax assessment by the amount upon which tax has been so repaid.

(2) Where a deduction on account of any of the matters specified in subsection (1) of this section has been allowed for the purposes of excess profits duty in calculating the profits of a controlled establishment for any period during which it is subject to control, this section shall, subject to the necessary modifications, apply as it applies where a deduction has been allowed in calculating the profits of a controlled establishment for the purposes of Part II. of the Munitions of War Act, 1915:

Provided that a repayment of tax shall not be allowed under this subsection and also under subsection (1) of this section in respect of the same deduction.

(3) The provisions of this Act relating to the allowance of a deduction during succeeding years for wear and tear of machinery or plant where full effect cannot be given to any such deduction in any year shall apply, with the necessary modifications, with respect to any repayment of tax under this section.

(4) Any application for relief under this section shall be made to the commissioners by whom the income tax assessment has been made, and those commissioners, upon proof of the facts to their satisfaction, shall certify to the Commissioners of Inland Revenue the sum repayable, and the Commissioners of Inland Revenue shall cause repayment to be made accordingly.

54. . . . . (*f*).

55. . . . . (*g*).

56. The provisions of this Act relating to the deduction to be allowed in respect of diminished value by reason of wear and tear shall have effect as if the references therein to diminished value by reason of wear and tear during the year of any machinery or plant included references to diminished value by reason of any machinery or plant having been temporarily out of use at any time during the year through circumstances attributable, directly or indirectly, to the present war.

Part V.—Administration.

Special Commissioners.

67.—(1) . . . .

(2) In cases in which the special commissioners have authority to make, sign or allow assessments, or to hear appeals, they shall possess and exercise all the powers of the additional commissioners and general

(*f*) Repealed, S. L. R. 1927, 17 & 18 Geo. 5, c. 42.

(*g*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

commissioners with respect to assessments, appeals, and the collection and recovery of tax.

PART VI.—ASSESSMENT.

Provisions as to Assessment.

98.—(1) The assessors appointed to execute this Act shall, within the time, and in the manner, directed by the precept of the general commissioners, cause general notices to be given, requiring all persons who, by this Act, are required to make out and deliver any list, declaration, or statement, to make out and deliver the same to the respective assessors as therein directed within such time as shall be limited by the precept, not being later than twenty-one days from the date of the precept.

(2) General notices shall be given by affixing a notice on, or near to, the door of the church or chapel and market house or cross (if any) of the parish for which the assessors act or, if the parish has no church or chapel or market house or cross, then on or near to the door of the church or chapel nearest to the parish.

(3) The general notices so affixed shall be deemed sufficient notice to all persons resident in the parish, and the affixing of the same, in manner aforesaid, shall be deemed good service thereof.

(4) The assessors shall cause the notices to be from time to time replaced, if necessary, during ten days before the time required for the delivery of the said lists, declarations, and statements.

(5) Any person wilfully tearing, defacing or obliterating any such notice so affixed shall forfeit a sum not exceeding twenty pounds.

99.—(1) The assessors shall, within the time directed by the precept of the general commissioners, give a particular notice to every person chargeable within the limits wherein they act, requiring him, within such time as shall be limited by the precept, to prepare and deliver to the assessors all such lists, declarations, and statements as are required by this Act to be delivered.

(2) A particular notice may be given either personally, or by leaving a notice at the dwelling-house, place of residence or place of business of the person chargeable, or on the premises to be charged by the assessment.

100.—(1) Every person chargeable under this Act, when required to do so by any general or particular notice given in pursuance of this Act, shall, within the period limited by such notice, prepare and deliver to the assessor, a true and correct statement in writing as required by the Act, signed by him, containing—

(a) the annual value of all lands and tenements in his occupation, whether situate in one, or more than one, parish;

(b) the amount of the profits or gains arising to him, from each and every source chargeable according to the respective schedules, estimated for the period and according to the provisions and rules of this Act.

(2) To the said statement shall be added a declaration that such values or amounts are estimated in respect of all the sources of income mentioned in this Act, describing the same, after deducting only such sums as are allowed.

(3) Every such statement shall be made exclusive of any interest of money or other annual payment arising out of the property of any other person charged in respect thereof.

(4) Every person upon whom a particular notice has been served by an assessor requiring him to deliver a statement of any profits, gains, or income in respect of which he is chargeable under Schedule D or Schedule E, shall deliver a statement in the form required by the notice, whether or not he is so chargeable:

Provided that the penalty inflicted upon any person proceeded against for not complying with this provision who proves that he was not chargeable to tax, shall not exceed five pounds for any one offence.

101.—(1) Every person acting in any character on behalf of any incapacitated person or person not resident in the United Kingdom who, by reason of such incapacity or non-residence in the United Kingdom, cannot be personally charged under this Act, shall, whenever required to do so by any general or particular notice, within the like period, and in any parish in which he may be chargeable on his own account, deliver such a statement as in the last preceding section is described of the profits or gains in respect of which the tax is to be charged on him on account of that other person, together with the prescribed declaration.

(2) Where two or more such persons are liable to be charged for the same person—

(a) one statement only shall be required to be delivered which may be made by them jointly, or by any one or more of them; and

(b) notice in writing may be given by any such persons to the general commissioners for each division in which they are called upon for a statement stating in which parish or parishes they are respectively chargeable on their own account, and in which of those parishes they desire to be charged on behalf of the person for whom they act, and they shall, if any one of them be liable to be charged on his own account in that parish, be charged therein accordingly by one assessment.

102.—(1) If any person shall come into a parish in which he has not been charged to tax, the assessor, collector, or surveyor may give him notice in writing to deliver, within fourteen days from the giving of the notice—

(a) a declaration in writing, signed by him, specifying the parish and county in which he has been assessed; or

(b) in default thereof, a statement in order that he may be assessed and charged in the parish into which he has come.

(2) A person who neglects or refuses to deliver, within the time limited, any such declaration or statement, or who makes a declaration

or statement which is false or untrue in any particular, shall forfeit a sum not exceeding twenty pounds.

(3) If in any case a person who is, or who resides, in any parish has not been assessed therein, the commissioners acting for the parish may assess him, as though he had been resident there at the time of the publication of the general notices directed by this Act, unless he proves to their satisfaction that he has been duly assessed in some other parish.

103.—(1) Every person who, in whatever capacity, is in receipt of any money or value, or of profits or gains arising from any of the sources mentioned in this Act, of or belonging to any other person who is chargeable in respect thereof, or who would be so chargeable if he were resident in the United Kingdom and not an incapacitated person, shall, whenever required to do so by any general or particular notice, prepare and deliver, within the period mentioned in such notice, a list in the prescribed form, signed by him, containing—

(a) a true and correct statement of all such money, value, profits or gains;

(b) the name and address of every person to whom the same shall belong;

(c) a declaration whether every such person is of full age, or a married woman living with her husband, or a married woman whose husband is not accountable for the payment of any tax charged on her, or is resident in the United Kingdom or is an incapacitated person.

(2) If any person above described is acting jointly with any other person, he shall, in like manner, deliver a list of the names and addresses of all persons joined with him at the time of delivery of the list mentioned in the last preceding subsection.

(3) (a) A trustee who has authorised the receipt of profits arising from trust property by the person entitled thereto, or by the agent of such person, if that person or agent shall actually receive the same under that authority; or

(b) An agent or receiver of any person resident in the United Kingdom, other than an incapacitated person,

shall not, if he returns a list, as required by this section, of the name, address and profits of that person, be required to do any other act for the purpose of the assessment of that person, unless the commissioners acting in the execution of this Act in respect of the assessment to be made on that person, require the testimony of the trustee, agent, or receiver, as the case may be, in pursuance of the provisions of this Act.

104. Every person, when required to do so by a general or particular notice under this Act shall, within the time limited thereby, prepare and deliver to the assessor a list, in writing, containing to the best of his belief—

(a) the name of every lodger or inmate resident in his dwelling-house; and

(b) the name and ordinary place of residence of any such lodger or inmate who has any ordinary place of residence elsewhere at which he can be assessed and who desires to be assessed at such ordinary place of residence.

105.—(1) Every employer, when required to do so by notice from an assessor, shall, within the time limited by the notice, prepare and deliver to the assessor a return containing—

(a) the names and places of residence of all persons employed by him; and

(b) the payments made to those persons in respect of that employment, except persons who are not employed in any other employment and whose remuneration in the employment for the year does not exceed *one hundred and sixty pounds* (*h*),

and the provisions of this Act with respect to the failure to deliver lists, declarations, and statements, in accordance with a general or particular notice, shall apply to any such return:

Provided that an employer shall not be liable to any penalty for omitting from any such return the name or place of residence of any person employed by him and not employed in any other employment, if it appears to the general commissioners, on inquiry before them, that such person is entitled to total exemption from tax.

(2) Where the employer is a body of persons, the secretary of the body, or other officer (by whatever named called) performing the duties of secretary, shall be deemed to be the employer for the purposes of this section, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

(3) This section shall extend, in the case of weekly wage-earners to whom the provisions of this Act as to quarterly assessment apply, so as to enable returns to be required at such times and intervals as may be fixed by regulations made by the Commissioners of Inland Revenue.

(4) Where an employer is a body corporate (including a company), that body corporate shall be liable to a penalty for failure to deliver a return in pursuance of this section, as well as the secretary or other officer performing the duties of secretary of the body corporate.

106.—(1) The chamberlain or other officer acting as treasurer, auditor or receiver for the time being of any body of persons chargeable to tax, shall be answerable for doing all such acts as are required to be done under this Act, for the purpose of the assessment of such body and for payment of the tax, and for the purpose of the assessment of the officers and persons in the employment of such body:

Provided that, in the case of a company, the person so answerable shall be the secretary of the company or other officer (by whatever name called) performing the duties of secretary.

(2) Every such officer as aforesaid may from time to time retain out of any money coming into his hands, on behalf of the body, so much

(*h*) Words substituted, Act of 1925, s. 15 (4).

thereof as is sufficient to pay the tax charged upon the body, and shall be indemnified for all such payments made in pursuance of this Act.

107.—(1) A person who neglects or refuses to deliver, within the time limited in any general or particular notice, or wilfully makes delay in delivering a true and correct list, declaration, or statement, which he is required under this Act to deliver, shall—

(a) if proceeded against before the general commissioners, forfeit a sum not exceeding twenty pounds and treble the tax which he ought to be charged under this Act, and such penalty shall be recovered in the same way as any other penalty under this Act, and the increased tax shall be added to the assessment; or

(b) if proceeded against by action or information in any court, forfeit a sum of fifty pounds (*i*).

(2) The commissioners shall also proceed to assess or cause to be assessed every such person who makes default as aforesaid.

(3) If any person who is required to deliver a list, declaration, or statement on behalf of any other person, delivers an imperfect list, declaration, or statement, and declares himself unable, within the time limited, to deliver a more perfect list, declaration, or statement, and states the reasons for his inability, he shall not, if the said commissioners are satisfied with his explanation and grant further time for delivery, be liable to the penalty prescribed by this section, if he delivers, within the further time granted, as perfect a list, declaration, or statement as the nature of the case permits.

(4) Provided as follows:—

(a) If it appears to the commissioners, on enquiry before them, that a person, to or on whom the assessor has not delivered or served a particular notice, is entitled to exemption from tax, that person shall not be liable to any penalty for not delivering a statement:

(b) A person chargeable in any department of office by commissioners specially appointed to act for that department, in respect of profits arising from an office, pension, or stipend, shall not be liable to any penalty for not delivering a statement thereof unless the assessor for that department has required a statement from him by a particular notice.

108.—(1) The assessor shall make out and deliver to the surveyor of the district a list containing—

(a) the names of all persons to or on whom notices ought to the best of his knowledge to be delivered or served in pursuance of this Act;

(*i*) Increased to £20 and treble the tax with which the offender ought to be charged under the Act of 1918, by sect. 23 (2) of the Act of 1923.

(b) the names of all persons who are to the best of his knowledge chargeable within the limits of the assessor . . . . (*k*);

(2) The assessor for every parish shall appear personally before the general commissioners, at a meeting appointed by them, and shall make oath, before them, that the general notices prescribed by this Act have been duly fixed . . . . (*l*), and that the list delivered by him to the surveyor contains the name of every person, within his knowledge, to or on whom notice was required to be delivered or served.

(3) If any assessor neglects to appear before the said commissioners, refuses to take the oath, or omits or neglects to return to the surveyor the name of any person whose name ought to be included in any such list, he shall forfeit a sum not exceeding twenty pounds.

109. The surveyor may at any time cause a notice to be delivered or served—

(a) to or on any person to whom the assessor has neglected to give a notice which ought to have been given; and

(b) to or on any person coming to reside in any parish after the expiration of the general notices prescribed by this Act.

110.—(1) The assessments under Schedules A and B for any parish shall contain—

(a) the full and just annual value of all lands, tenements, hereditaments and heritages estimated in each particular case as directed by this Act; and

(b) the names of the occupiers and proprietors thereof.

(2) Such assessments, together with all statements which have been delivered to the assessors, both of annual value and of any deductions claimed to be made therefrom, shall be progressively numbered.

111. (*Instruction and assistance of assessors.*)

112. If *the surveyor or* (*m*) the assessor does not receive a statement from a person liable to be charged to tax, *the assessor* (*m*) shall to the best of his information and judgment—

(a) make an assessment upon that person of the amount at which he ought to be charged under Schedules A, B, and E; and

(b) estimate the amount at which that person ought to be charged under Schedule D, and make a return to the commissioners of the name and address of that person and of any other particulars which the commissioners may require.

113. (*Delivery and examination of assessments and statements.*)

114. (*Inspection of parish books.*)

115. (*Production of rate books to general commissioners.*)

(*k*) Paras. (a) and (b) substituted, and paras. (c) and (d) omitted, Act of 1927, s. 46, and Fifth Sched., Part III.

(*l*) Words omitted, *ibid.*

(*m*) Words inserted and substituted, Act of 1927, s. 46, and Fifth Sched., Part III.

116.—(1) If—

(a) a person chargeable does not, after due notice under this Act, deliver a statement of the annual value of property in his occupation, estimated according to the provisions and rules applicable to the case; or

(b) the commissioners are not satisfied with any statement which has been delivered,

the assessor or surveyor, as the case may be, on obtaining a signed order of the general commissioners to that effect, and after two days' notice to the occupier, may, with the assistance of a person or persons of skill named in the order, at all seasonable times in the daytime, view and examine any lands or property chargeable, in order to make a survey thereof, or otherwise to ascertain the annual value at or by reference to which the same ought to be charged, and may enter upon any lands or grounds whether enclosed or not, and measure and survey the same, if he cannot otherwise ascertain the annual value thereof.

(2) This section shall not apply within the administrative county of London.

117. (*Powers of assessors for public departments.*)

118.—(1) The clerks to the respective general commissioners shall, with all convenient speed, abstract the particulars contained in the lists and statements delivered to the commissioners, into books provided for the purpose, and according to the forms prescribed by the Commissioners of Inland Revenue.

(2) The abstracts shall contain the names of the persons delivering such lists and statements, and the several amounts of profits returned by them respectively, and shall be delivered to the commissioners.

(3) Every surveyor who has made the prescribed declaration shall be allowed free access to the books of abstract at all seasonable times and may take copies of or make extracts from the same.

119.—(1) The surveyor may examine all statements and assessments made for any parish for any year of assessment, whether the said assessments have been signed and allowed or not.

(2) Every person having the custody of any statement shall, on request of the surveyor, deliver it into his custody, taking his receipt for the same; and every person having the custody of any assessment shall, on the like request, produce the same to the surveyor, who may take charge of it until he has taken such copies or extracts as may be necessary.

120.—(1) The general commissioners shall take into consideration the assessments under Schedules A, B, and E, delivered by the assessors, after they have been examined by the surveyor, and if he has not objected to the assessments and the commissioners are satisfied that they have been made truly and without fraud, and so as to charge the persons,

properties, and profits to which they relate with the full tax which ought to be charged, they shall sign and allow them.

(2) If the surveyor objects to, and applies for the revision of, any such assessment, and suggests, in writing, to the general commissioners any error, mistake, omission, or fraud in making the same, the commissioners shall, to the best of their judgment, rectify the assessment, so that the proper tax may be fully charged according to the intent and meaning of this Act.

121.—(1) Statements of profits or gains under Schedule D shall, unless an assessment thereon is required to be made by the special commissioners, be laid before the additional commissioners.

(2) Within a reasonable time after the surveyor has examined the statements, the additional commissioners shall appoint meetings for the consideration of all such statements as are then, or from time to time, delivered to them.

(3) If—

(a) the additional commissioners are satisfied that a statement has been bonâ fide made in accordance with this Act, and so as to enable them to assess the person with the full tax which ought to be charged; and

(b) no information is given to the additional commissioners as to the insufficiency of the statement, and the surveyor makes no objection thereto, which he is hereby authorised to make for sufficient cause,

the additional commissioners shall direct an assessment to be made in accordance with the statement:

Provided as follows:—

(i) If the surveyor then declares himself dissatisfied with the determination of the said additional commissioners, as not being in accordance with the true intent and meaning of this Act, he may require them to state and sign a case, giving their determination thereon, for the opinion of the general commissioners for the division, which they shall sign and state accordingly:

(ii) The case so stated and signed shall be delivered to the surveyor, who shall transmit it to the general commissioners. The general commissioners shall, with all convenient speed, return the case with their opinion subscribed thereon, and the assessment shall be altered or confirmed accordingly.

(4) If—

(a) a person makes default in the delivery of a statement in respect of any tax under Schedule D with which he has not been otherwise charged; or

(b) the additional commissioners are not satisfied with a statement which has been delivered, or have received any information as to its insufficiency; or

(c) the surveyor makes an objection in writing to a statement as aforesaid, setting forth the cause thereof,

the additional commissioners shall make an assessment on the person concerned in such sum as, according to the best of their judgment, ought to be charged on him.

(5) The additional commissioners may refer any statement to the general commissioners, without making any assessment thereon, by delivering to them a case in writing setting forth the matters in question, either of law or of fact, relating thereto, and the general commissioners shall proceed to enquire into the merits of such statement, in the like manner as they are authorised to do in the case of an appeal against an assessment, and thereupon an assessment shall be made in accordance with the determination of the general commissioners.

(6) The surveyor may, at all seasonable times, examine any assessment made by the additional commissioners before it is delivered to the general commissioners, and, if he discovers any error requiring amendment, he shall certify the same to the commissioners by whom the assessment was made, who, on sufficient cause shown to them, shall make any amendment which they consider is required.

(7) If the surveyor makes an objection in writing to the additional commissioners, which he is hereby authorised to do upon sufficient cause, as to the amount of an assessment made by them, they shall certify his objection, together with their reasons for making the assessment, and any information they have obtained respecting it, to the general commissioners.

(8) The surveyor shall give notice of his objection and particulars thereof to the person assessed, in order that he may appear before the general commissioners in support of the assessment.

122.—(1) The additional commissioners shall, as their assessments are from time to time completed, cause to be made out and entered in books provided for the purpose, certificates of assessments, in the form prescribed by the Commissioners of Inland Revenue, distinguishing the parish for which each assessment is made, and containing—

(a) the names, surnames, and addresses of the persons assessed, progressively distinguished by numbers or letters; and

(b) the sums which ought to be paid by them respectively.

(2) The assessment shall be signed by the additional commissioners, and shall be delivered from time to time, together with the statements delivered by the persons assessed, and any particulars furnished by the respective assessors relating to the assessments, under cover sealed up, to the general commissioners, but no notice of any such assessment shall be delivered to any person assessed until fourteen days after the surveyor has had notice of the delivery of the assessments, so signed as aforesaid, to the general commissioners.

(3) The assessments under Schedule D, certified and delivered by the additional commissioners to the general commissioners shall be allowed

and confirmed by the general commissioners after the time for hearing appeals against such assessments has expired.

123.—(1) A person chargeable under Schedule D, who does not claim the exemption granted in a case where the total income from all sources does not exceed one hundred and thirty pounds a year, may require that all proceedings in order to an assessment upon him under that schedule shall be taken before the special commissioners, instead of before the additional or the general commissioners, and in that case shall deliver a notice of his request *together with the statement of his profits or gains to the surveyor of the district* (*n*). The notice and statement shall be delivered within the time limited by the general notice under this Act for delivery of lists and statements.

(2) The surveyor shall, after examining the statement, make an assessment to the best of his judgment, and deliver a certificate thereof, together with the statement, to the special commissioners, who, after examination thereof, shall sign and allow such an assessment as appears to them just and proper, which shall be subject to appeal as hereinafter provided.

(3) The special commissioners shall notify the amount of the charge to the person charged, who shall pay the tax to the proper officer.

124. Assessments in respect of the annual value or profits or gains arising from a railway shall be made by the special commissioners, who shall notify their assessment to the secretary or other officer of the company upon which it is made, and the amount of the assessment shall be paid, collected, and levied in like manner as any other assessment made by the special commissioners.

Additional Assessments.

125.—(1) If the surveyor discovers—

that any properties or profits chargeable to tax have been omitted from the first assessments; or

that a person chargeable has not delivered any statement, or has not delivered a full and proper statement, or has not been assessed to tax, or has been undercharged in the first assessments; or

that a person chargeable has been allowed, or has obtained from and in the first assessments, any allowance, deduction, exemption, abatement, or relief not authorised by this Act,

then and in every such case—

(i) where the tax is chargeable under Schedule A, B, or E:—

(a) If the first assessments have not been signed and allowed, the surveyor shall amend the assessment and assess the person liable to the full amount, and at the full rate of tax, at which he ought to be charged;

(b) If the first assessments have been signed and allowed, the surveyor shall certify the particulars to the general com-

(*n*) Words substituted, Act of 1927, s. 46, and Fifth Sched., Part III.

missioners, who shall sign and allow an additional first assessment in accordance therewith:

Provided that any such additional first assessment shall be subject to appeal and other proceedings as in the case of a first assessment:

(ii) where the tax is chargeable under Schedule D, the additional commissioners shall make an assessment, on the person chargeable, in an additional first assessment, in such a sum as, according to their judgment, ought to be charged, and any such assessment shall be subject to objection by the surveyor, and to appeal.

(2) An assessment may be amended, or an additional first assessment may be made at any time not later than three (*k*) years after the expiration of the year of assessment.

(3) Any assessments not made at the time when the first assessments are signed and allowed shall, as soon as they are made, be added to the first assessments, and to the respective duplicates thereof, by means of separate forms of assessment and duplicate.

Surcharges.

126.—(1) If the surveyor discovers that a person liable to tax has not been charged in respect thereof in any first or additional first assessment, he may, at any time within three (*k*) years after the expiration of the year of assessment for which that person ought to have been charged, surcharge, to the best of his judgment, the person liable, to the amount which ought to have been charged for that year.

(2) In every such case the surveyor shall certify the particulars of the omission, and of the surcharge, to the general commissioners, and shall give to any person so surcharged notice of the surcharge and particulars thereof.

(3) The general commissioners, upon the delivery of the certificate and upon oath being made, by the surveyor or some other credible witness, that service of the notice of surcharge has been duly made upon the person surcharged, shall sign and allow the certificate, as hereinafter prescribed, subject to appeal.

(4) Any such certificate of surcharge shall not be signed or allowed, nor shall any appeal against the surcharge be heard, by the general commissioners, before the expiration of ten days after service of the notice of surcharge.

(5) The certificate of the surveyor, together with the oath of service of the notice of surcharge, shall be sufficient proof of the contents thereof, unless, on the production of the notice to the general commissioners, the contrary is shown by the person surcharged, and no other proof than as aforesaid of the contents of any such notice shall be required before the certificate is signed and allowed, or on appeal therefrom, or in any matter relating thereto.

(*k*) Extended to six years by Finance Act, 1923, s. 29 (1).

(6) The oath of service of notice of surcharge shall be to the effect that a notice was duly served, upon each person mentioned in the certificate, containing the particulars as set forth therein, on the day or days mentioned in the certificate.

127.—(1) A person to whom such a notice of surcharge has been given may, whether he has previously delivered a statement or not, within ten days from the service of the notice—

(a) deliver to the surveyor a true and perfect return, containing all the particulars required by this Act; or

(b) give notice in writing to the surveyor that he abides by the statement previously delivered by him.

(2) To such return or notice shall be annexed a declaration signed by the person to whom the notice of surcharge was given, and further signed and attested by one or more credible witnesses, and the declaration shall state, as the case may require—

(a) the grounds and cause of the neglect to deliver a statement; or

(b) the grounds and cause of every omission made, or stated in the notice of surcharge to have been made, in any statement delivered by him; or

(c) the grounds and cause of every claim of exemption, abatement, relief, allowance, or deduction made in any such statement; and

(d) that the statement by which he abides, or the return to which the declaration is annexed, is a true and perfect return of all particulars required by this Act, to the best of the judgment and belief of the declarant; and

(e) that any neglect, omission, or claim was not made with intent to defraud the revenue.

(3) If a person, in any such declaration as aforesaid, wilfully and fraudulently declares anything which is false, he shall be guilty of a misdemeanour, and shall be liable to imprisonment not exceeding six months, and to a fine not exceeding treble the amount of tax for which he has been surcharged, as the court shall order.

The indictment for any such misdemeanour shall be laid in the county in which the declaration was exhibited to the general commissioners.

(4) If the surveyor is satisfied with the statement or return and the declaration, he may certify his satisfaction therewith to the general commissioners, and the commissioners shall thereupon cause the person surcharged to be charged on the amount set forth in the statement or return, in single rate of tax.

128.—(1) The surveyor may object to any such statement, return, or declaration, and in that case—

(a) he shall serve notice of objection on the person surcharged; and

(b) he shall certify the statement or return and the declaration together with the cause of his objection, to the general commissioners.

(2) The general commissioners shall thereupon cause a charge to be made, in accordance with the said certificate of objection, and no abatement shall be made therefrom, except upon an appeal by the person surcharged.

129.—(1) If, within ten days after the service of the notice of surcharge, the person surcharged delivers a return and declaration to which the surveyor objects, that delivery shall operate as a notice of appeal to the general commissioners against the surcharge.

(2) If the person surcharged does not, before the expiration of ten days after service of the notice of surcharge, deliver a return or declaration, the general commissioners may, if he or his agent appears upon the day appointed for hearing appeals against surcharges and delivers a return and declaration as is herein required, hear and determine the matter, although the person surcharged has not given notice of his intention to appeal.

(3) If, upon the said day, neither the person surcharged nor his agent appears, or in default of the delivery of a return or declaration as aforesaid, the general commissioners shall confirm the certificate of surcharge.

(4) If—

(a) the commissioners do not meet before the time limited for the hearing of appeals from the surcharges of the surveyor; or

(b) the surveyor has not had notice of a meeting of the commissioners,

the commissioners shall, at their next subsequent meeting, sign and allow the certificates, and afterwards hear and determine all appeals therefrom.

(5) No surcharge shall be allowed and signed unless the certificate thereof has been delivered to the general commissioners within three (*l*) years after the expiration of the year of assessment in respect of which the surcharge is made.

(6) In default of a meeting of the commissioners, the delivery of a certificate of surcharge by the surveyor to their clerk shall be a sufficient delivery.

130.—(1) A certificate of surcharge, as aforesaid, shall be sufficient authority to the general commissioners for causing supplementary assessments to be made from time to time.

(2) Supplementary assessments shall include—

(a) all surcharges according to the certificates of surcharge, amended in cases requiring amendment, according to the determination of the commissioners;

(b) all treble tax, or any part thereof, assessed over and above the rate or rates of tax prescribed; and

(c) all penalties imposed by the commissioners for offences under this Act.

(*l*) Extended to six years by Act of 1923, s. 29 (1).

Weekly Wage-earners.

131. The Commissioners of Inland Revenue may make regulations generally with respect to the assessment, charge and collection of income tax, in the case of weekly wage-earners to whom the provisions of this Act with regard to quarterly assessment apply, and with respect to the procedure to be adopted for the purpose, and may, in particular, by those regulations in the case of those weekly wage-earners, provide for assessment and charge by the surveyor, and for collection by a collector appointed by them, and for the application of the provisions and rules applicable to Schedule E, in cases where those provisions and rules are not otherwise applicable, but the right of appeal to the general commissioners shall not be affected.

Provisions against Fraudulent Practices.

132.—(1) Where a person who ought to be charged with tax, as directed by this Act, is not duly assessed and charged by reason that he has—

(a) fraudulently changed his place of residence or fraudulently converted, or fraudulently released, assigned, or conveyed any of his property; or

(b) made and delivered any statement or schedule which is false or fraudulent; or

(c) fraudulently converted any of his property, which was chargeable, by altering any security relating thereto or by fraudulently rendering it temporarily unproductive, in order not to be charged for the same or any part thereof; or

(d) been guilty of any falsehood, wilful neglect, fraud, covin, art or contrivance whatsoever,

such person shall, on proof thereof to the general commissioners for the division in which he has been charged, or, if he has not been charged, then for any division in which he is chargeable (*m*), be assessed and charged treble the amount of the charge which ought to have been made upon him:

Provided that, if any charge has been made, but that charge is less than the charge which ought to have been made, such person shall be assessed and charged, over and above the former charge, treble the amount of the difference between the charge which was made and the charge which ought to have been made, such amount to be added to the assessment.

(2) A person who knowingly and wilfully aids, abets, assists, incites or induces another person to make or deliver a false or fraudulent account, statement, or declaration, of or concerning any profits or gains chargeable, or the yearly rent or value of any lands, tenements, hereditaments or heritages, or any matters affecting any such rent or value, shall for every such offence forfeit the sum of fifty pounds (*n*).

(*m*) See Act of 1927, s. 44 (4). (*n*) Increased to £500 by s. 23 (3) of the Act of 1923.

PART VII.—APPEALS.

133.—(1) (a) Save where expressly authorised by this Act, the general commissioners shall not alter any assessment before the time for hearing and determining appeals, and then only in cases of assessments appealed against, and in accordance with their determination.

(b) If the clerk to the commissioners or any other person makes, causes, or allows to be made, in any assessment, any unauthorised alteration, he shall incur a penalty of fifty pounds.

(2) An appeal, once determined by the commissioners, shall be final, and neither the determination of the commissioners, nor the assessment made thereon, shall be altered, except by order of the court when a case has been required as provided by this Act.

(3) Where an objection has been made by the surveyor to an assessment upon any person, and that objection has been dealt with and determined on appeal, the surveyor shall not, thereafter, make any further charge for the same year, upon that person, in respect of the same matter, property, or profits included in the assessment to which the objection, so determined, was made.

134.—(1) As soon as the assessments under Schedules A and B for any parish have been signed and allowed, the general commissioners shall cause notice thereof, and of the day for hearing appeals therefrom, to be given in such manner as they deem expedient.

(2) Any such notice may be given—

(a) by delivering a copy of the assessment to the assessor of the parish for inspection by the persons assessed, together with a notice of the day of appeal, to be affixed on or near to the church door or on any other public place in the parish; or

(b) by delivering to each person assessed a notification of the amount of his assessment and of the day of appeal.

(3) With respect to assessments under Schedule D, the general commissioners shall cause a general notice to be fixed up in their office, or left with their clerk, and also to be affixed on or near the door of the church or chapel of each parish or if there be no such church or chapel in any such parish, of the church or chapel of some adjoining parish, limiting a reasonable time for hearing appeals, and, except as otherwise provided in this Act, no appeal shall be heard after the time so limited.

135. Notice of appeal meetings to be held by the general commissioners shall also be given to the surveyor by the clerk to the commissioners.

136.—(1) A person aggrieved by any assessment upon him, made by the additional commissioners, or by the assessor for any parish, or by a surveyor, in any first or additional first assessment, or by any objection by the surveyor to an assessment made by the additional commissioners, shall be entitled to appeal to the general commissioners, on giving notice

in writing to the surveyor, within twenty-one days after the date of the notice of such assessment or objection.

(2) Any owner or other person in receipt of the rent of any lands, although not the occupier thereof, who is aggrieved by the amount of the annual value of the lands under Schedule A shall have the same right of appeal to the general commissioners as if the assessment were made upon himself.

(3) If it be shown to the satisfaction of the general commissioners that owing to absence, sickness or other reasonable cause, any person has been prevented from appealing in due time, or from attending at the hearing of an appeal on the day fixed for that purpose, they may postpone the hearing of his appeal for such reasonable time as they think necessary, or may admit the appeal to be made by any agent, clerk or servant on his behalf.

(4) (a) On the application of any person who has been assessed, and who has removed from the division in which the assessment was made, without having appealed in that division, the Commissioners of Inland Revenue may, if they think fit, authorise the commissioners of the division to which that person has removed to hear and determine his appeal against the assessment, and those commissioners shall proceed accordingly.

(b) Any sum from which the appellant may not be relieved on such appeal, shall be recovered and levied as if the appeal had been heard and determined by the commissioners of the division in which the assessment was made.

137.—(1) The general commissioners shall cause notice of the day for hearing appeals to be given to every appellant, and shall meet together for the hearing of appeals from time to time, with or without adjournment, until all appeals have been determined.

(2) The surveyor and the assessor may attend every appeal, and shall be entitled—

(a) to be present during all the time of the hearing, and at the determination of the appeal; and

(b) to produce any lawful evidence in support of the assessment or surcharge; and

(c) to give reasons in support of the assessment or surcharge.

(3) (a) Upon any appeal, the general commissioners *shall* (*n*) permit any barrister or solicitor to plead before them on behalf of the appellant or officers, either vivâ voce or in writing, *and shall* (*n*) hear any accountant.

(b) . . . . (*o*).

(c) In this subsection "accountant" means a person who has been admitted a member of an incorporated society of accountants.

(*n*) Words substituted, Act of 1923, s. 25.

(*o*) Para. (b) repealed, Act of 1923, s. 39 (4) and Sched.

(4) If, on an appeal, it appears to the majority of the commissioners present at the hearing, by examination of the appellant on oath or affirmation, or by other lawful evidence, that the appellant is overcharged by any assessment or surcharge, the commissioners shall abate or reduce the assessment or surcharge accordingly, but otherwise every such assessment or surcharge shall stand good.

(5) If, on any appeal, it appears to the commissioners that the person assessed or surcharged ought to be charged in an amount exceeding the amount claimed in the assessment or surcharge they shall charge him with the excess.

(6) (a) Appeals against surcharges shall be heard and determined in like manner as appeals against first assessments.

(b) If a surcharge is allowed on appeal by the general commissioners, in whole or in part, the assessment shall be made upon the amount of the surcharge allowed in treble the rate of tax prescribed:

Provided that, if the commissioners are of opinion—

(i) that the assessment might have been amended by the surveyor by means of the original statement of the appellant;

(ii) that the alleged default, neglect, or omission, or the claim of exemption, abatement, relief, allowance, or deduction was not wilfully made with intent to defraud the revenue;

(iii) that the appellant was prevented from making an amended return in due time by absence, sickness, or other sufficient cause;

(iv) that there was reasonable cause of doubt or controversy, on the part of the appellant, on the subject-matter of appeal;

the commissioners may remit the treble rate of tax, in whole or in part, and may charge at the single rate of tax only.

138.—(1) If on appeal against an assessment under Schedule A or Schedule B any dispute arises as to the annual value of any lands, tenements, hereditaments, or heritages, the general commissioners may, if they consider it necessary, and shall, if required by the appellant, direct the appellant to cause a valuation to be made by a person of skill named by them, and may require the same to be verified on the oath of such person, and the annual value shall be determined in accordance with that valuation.

(2) If the appellant does not proceed, with effect, to cause such valuation to be made, the commissioners shall determine the annual value according to the best of their judgment.

(3) The costs and charges of any such valuation shall abide the final determination of the commissioners, and, if the value so found exceeds the value alleged by the appellant, the commissioners may order him to pay the costs and charges of the valuation, but if they are of opinion that such costs and charges have not been incurred through any

default of the appellant, they shall issue an order for the payment of the said costs and charges by the Commissioners of Inland Revenue.

(4) This section shall not apply within the administrative county of London.

139.—(1) If the general commissioners have received notice of appeal against an assessment made by the additional commissioners, or see cause to allow the objection of the surveyor to any such assessment, they shall issue a precept to the appellant ordering him to deliver to them, within the time limited by the precept, a schedule containing such particulars, for their information, as they may demand under the authority of this Act respecting—

(a) the property of the appellant; or

(b) the trade, profession, employment or vocation carried on or exercised by him; or

(c) the amount of his profits or gains, distinguishing the particular amounts derived from each separate source; or

(d) any deductions made in arriving at his profits or gains,

which particulars the said general commissioners are hereby empowered and required to demand at their discretion whenever the same shall appear to them necessary for the purposes mentioned in this Act.

(2) The general commissioners may issue further precepts whenever they consider it necessary for the purposes aforesaid, until complete particulars have been furnished to their satisfaction.

(3) A person to whom a precept is issued shall deliver the schedule required, within the time limited, and in default thereof, shall forfeit a sum not exceeding twenty pounds and treble the tax at which he ought to be charged.

(4) Any surveyor may, at all reasonable times, inspect and take copies of or extracts from any schedule.

140.—(1) A person who has delivered a statement or schedule and discovers any omission or wrong statement therein, may deliver an additional statement or schedule rectifying the same, and shall not thereafter be liable to any proceeding by reason of his omission or wrong statement.

(2) A person who has not delivered a statement or schedule, within the time limited, may deliver it at any time before proceedings for recovery of a penalty, incurred in respect of such non-delivery, have been commenced, and thereafter no such proceedings shall be taken.

(3) (a) If proceedings for recovery of any such penalty have been commenced before the general commissioners, they may, on proof to their satisfaction that no fraud or evasion was intended, stay the proceedings, either on payment of the costs then incurred, or without any such payment.

(b) If proceedings have been commenced in any court, the general commissioners may certify that in their judgment no fraud or evasion was intended, and the court may, on summary application, stay the proceedings, on such terms as to the court may seem fit.

(4) If a person has delivered an imperfect statement or schedule, and satisfies the general commissioners that there is a sufficient reason why a perfect statement or schedule cannot be delivered within due time, the commissioners shall extend the time for delivery as from time to time they think fit. During any such extension of time, a person who has delivered as perfect a statement or schedule as from the nature of the case he was able to deliver, shall not be liable to any penalty for not having delivered a statement or schedule within the time limited.

141.—(1) The surveyor may, within a reasonable time to be allowed by the commissioners to whom an appeal is made after examination by him of any schedule, object to such schedule or any part thereof, and in that case shall state, in writing, the cause of his objection, according to the best of his knowledge or information.

(2) In every such case, he shall give notice in writing of his objection, to the person to be charged in order that he may, if he thinks fit, appeal against the same. The notice shall be under cover and sealed, and addressed to the person to be charged.

(3) No assessment shall be confirmed or altered until any appeal against such objection has been heard and determined.

142. If—

(a) the commissioners to whom an appeal is made see cause to disallow an objection of the surveyor to a schedule; or

(b) on the hearing of an appeal, the commissioners are satisfied with the assessment made by the additional commissioners, or if, after the delivery of a schedule, they are satisfied therewith, and have received no information as to its sufficiency,

they shall direct the assessment to be confirmed or to be altered in accordance with any such schedule, as the case may require.

143.—(1) Whenever the general commissioners are dissatisfied with an assessment delivered to them by the additional commissioners or with a schedule, or if they require further information relating thereto, they may, at any time and from time to time, by precept, put any questions in writing concerning the assessment or schedule, or any matter which is contained or ought to be contained therein, or concerning any deductions made in arriving at the profits or gains, and the particulars thereof, and may require true and particular answers in writing, signed by the person to be charged, to be given within seven days after the service of the precept.

(2) (a) The person to be charged shall, within the time limited, either answer any such questions in writing signed by him, or shall

tender himself to be examined orally before the commissioners, and may object to, and refuse to answer, any question, but the substance of any answer or answers given by him orally shall be taken down in writing in his presence, and be read over to him, and after he has had liberty to amend any such answer or answers he may be required to verify the same on oath to be administered to him by any one of the commissioners, and every such oath shall be subscribed by the person by whom it is made.

(b) Where any clerk, agent or servant of the person to be charged tenders himself, on behalf of such person, to be examined orally before the commissioners, the same provisions shall apply to his examination as in the case of the person to be charged who tenders himself to be examined orally.

144.—(1) The general commissioners may summon any person whom they think able to give evidence respecting an assessment made or to be made on another person, to appear before them to be examined, and may examine such person on oath (except the clerk, agent, servant or other person confidentially employed in the affairs of a person to be charged who shall respectively be examined in the same manner, and subject to the same restrictions as in the case of a person to be charged who tenders himself to be examined orally).

(2) The oath shall be that the evidence to be given, touching the matter in question by the person sworn, shall be the truth, the whole truth, and nothing but the truth, and the said oath shall be subscribed by the person by whom it is made.

(3) A person who after being duly summoned—

(a) neglects or refuses to appear before the commissioners at the time and place appointed for that purpose; or

(b) appears, but refuses to be sworn or to subscribe the oath; or

(c) refuses to answer any lawful question touching the matters under consideration,

shall forfeit a sum not exceeding twenty pounds:

Provided that the penalty imposed in respect of any offence under paragraph (b) or (c) hereof shall not apply to any clerk, agent, servant or other person as aforesaid.

145. If—

(a) a person has neglected or refused to deliver a schedule in accordance with a precept of the commissioners; or

(b) any clerk, agent, or servant of, or any person confidentially employed by, a person to be charged, having been summoned, has neglected or refused to appear before the commissioners to be examined; or

(c) the person himself, or his clerk, agent, or servant or other person as aforesaid, has declined to answer any question put to him by the commissioners; or

(d) an objection has been made to a schedule, and the objection has not been appealed against; or

(e) the commissioners decide to allow any objection made by the surveyor;

the commissioners shall ascertain and settle, according to the best of their judgment, the sum in which the person chargeable ought to be charged, and shall make an assessment and charge accordingly.

146.—(1) If the general commissioners—

(a) have made a charge to tax under Schedule D in respect of a sum in excess of the amount contained in either the statement or the schedule of a person to be charged; or

(b) discover, from the information of the surveyor, or otherwise, that a charge to tax in respect of a sum in excess of either such amount ought to be made, and an assessment is made, at any time within the year of assessment or within three years (*p*) after the expiration thereof,

they may, unless the person to be charged proves to their satisfaction that the omission by him did not proceed from any fraud, covin, art or contrivance or any gross or wilful neglect, charge that person, in respect of such excess, in a sum not exceeding treble the amount of the tax on the amount of the excess.

(2) If the person to be charged has neglected or refused to deliver a statement or schedule, the said commissioners may charge him in a sum not exceeding treble the amount of the tax with which, in their judgment, he ought to be charged. Such sum shall be added to the assessment and applied in the same manner as other increased charges are applied.

147.—(1) Where proceedings in order to an assessment under Schedule D are taken before the special commissioners, the person assessed, or the surveyor, may appeal against the assessment signed and allowed by those commissioners, in like manner, and under the like provisions, as in the case of appeals against assessments made by the additional commissioners.

(2) Any such appeal shall be determined by the special commissioners, and if either the person assessed, or the surveyor, thereupon expresses dissatisfaction with their determination as being erroneous in any particular, the special commissioners shall, if required to do so, state and sign a special case, setting out the questions which arose on the appeal, and their determination thereon, and transmit it to the Commissioners of Inland Revenue for their opinion. The Commissioners of Inland Revenue shall subscribe their opinion on the case transmitted to them, and their decision shall be final and conclusive, subject to any relevant provisions of this Act relating to the statement of a case for

(*p*) Extended to six years after the date of the offence, Act of 1923, s. 23 (1).

the opinion of the High Court, and the assessment made shall be altered or confirmed accordingly.

148.—(1) An appeal against—

(a) an assessment under Schedule D (*q*) or an objection by a surveyor to such an assessment, or a surcharge under that Schedule;

(b) an assessment in respect of any concern described in Rules 1 and 2 of No. III. of Schedule A,

may be made to the special commissioners, instead of to the general commissioners, on due notice in writing being given to the surveyor, within the time limited for notices of appeal to the general commissioners in similar cases.

(2) Every such appeal shall be heard and determined by the special commissioners, and their determination shall be final and conclusive, subject to the provisions of this Act relating to the statement of a case for the opinion of the High Court.

(3) Provided that no claimant for the exemption granted by this Act, in a case where the total income does not exceed one hundred and thirty pounds a year, shall be allowed to appeal to the special commissioners, but every such claim shall be heard and determined by the general commissioners.

149.—(1) (a) Immediately after the determination by the general commissioners, or by the special commissioners, of an appeal under this Act, the appellant or the surveyor, if dissatisfied with the determination, as being erroneous in point of law, may declare his dissatisfaction to the commissioners who heard the appeal.

(b) Having declared his dissatisfaction, he may, within twenty-one days after the determination, by notice in writing addressed to their clerk, require the commissioners to state and sign a case for the opinion of the High Court thereon.

(c) The party requiring the case shall pay to the clerk to the commissioners a fee of twenty shillings for and in respect of the same, before he is entitled to have the case stated.

(d) The case shall set forth the facts and the determination of the commissioners, and the party requiring it shall transmit the case, when stated and signed, to the High Court, within seven days after receiving the same.

(e) At or before the time when he transmits the case to the High Court, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.

(2) (a) The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm, or amend

(*q*) These provisions are applied to assessments under Sched. E, Finance Act, 1922, s. 19.

the determination in respect of which the case has been stated, or shall remit the matter to the commissioners with the opinion of the Court thereon, or may make such other order in relation to the matter, and may make such order as to costs as to the Court may seem fit.

(b) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

(c) Subject to Rules of Court, the authority and jurisdiction of the High Court may be exercised by a judge of the High Court sitting in chambers, and either in vacation or in term time.

(3) An appeal shall lie from the decision of the High Court or of any judge thereof to the Court of Appeal and thence to the House of Lords, and in Scotland, from the decision of the Court of Session, as the Court of Exchequer in Scotland, to the House of Lords.

(4) Notwithstanding that a case has been required to be stated or is pending before the High Court, tax shall be paid in accordance with the assessment of the commissioners who have been required to state the case:

Provided that, if the amount of the assessment is altered by the order or judgment of the High Court, then—

(a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the High Court may allow; or

(b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except so far as any penalty is incurred on account of arrears), and shall be paid and recovered accordingly.

150. (*Books of assessment.*)

151.—(1) A person who, either on his own account, or on behalf of another person, has been assessed to tax, and is by any error or mistake again assessed for the same year for the same cause and on the same account, may apply to the general commissioners, acting for the division comprising the parish in which the erroneous assessment was made, for relief, and the said commissioners on proof to their satisfaction of the double assessment shall cause the said assessment, or so much thereof as constitutes a double assessment, to be vacated.

(2) If it appears, to the satisfaction of the Commissioners of Inland Revenue, that a person has been assessed more than once for the same cause and for the same year, they shall direct the whole, or such part of any such assessment as appears to be an overcharge, to be vacated, and thereupon the same shall be vacated accordingly.

(3) If it is proved, to the satisfaction of the Commissioners of Inland Revenue, that any such double assessment as aforesaid has been made, and that payment has been made on both assessments, they shall order the amount of the overpayment to be repaid to the applicant.

152. (*Charge duplicates.*)

PART VIII.—COLLECTION.

153.—(1) As soon as any assessments have been signed and allowed by the general commissioners, and the time for hearing appeals against the same has expired, the clerk to the commissioners shall duly prepare, on the prescribed forms, two duplicates thereof, and the commissioners shall forthwith sign and seal them.

(2) The assessments shall be kept by the clerk for the use of the commissioners, and the commissioners shall deliver one of the two duplicates to the surveyor for the district, and the other to the collector for the parish for which the assessments were made, together with a warrant, in the prescribed form, for collecting and levying the tax charged.

(3) Where a collector has been required to give security, the duplicates and warrants shall not be delivered to him until he has given that security.

154.—(1) An extract from any assessment made by the special commissioners, certified under the hand of their clerk, in such form as the Commissioners of Inland Revenue may prescribe, shall be sufficient authority to the proper officer to whom that extract is transmitted to receive, bring to account, and give discharges for the tax included in the extract and paid to him.

(2) If payment is not made to the proper officer, the special commissioners shall make a duplicate of the assessment and deliver it, together with their warrant for levying the amount of tax due, to the collector for the parish in which the person charged resides, who shall levy the same in accordance with the warrant.

155. (*Collection of tax in public departments.*)

156.—(1) Where a person, charged under Schedule D, has declared his intention to pay the tax under a number or letter to the proper officer within the time limited for payment, and the commissioners are satisfied with his declaration, they shall deliver to him a certificate specifying the amount of tax to be paid.

(2) The certificate shall be numbered or lettered in correspondence with the entry in the book of assessments to which it relates, and shall not name or describe the person charged.

(3) The general commissioners shall deliver to the proper officer duplicates of the assessments made by them, containing the sums charged on persons to whom certificates, as aforesaid, have been delivered, without naming any such persons, together with warrants for the receipt of the tax when it becomes payable.

(4) The tax payable on such assessments shall be paid to the proper officer, before the time limited for payment, and the production of the

certificate shall be sufficient authority to the said officer to receive the amount therein specified.

(5) On payment of any such amount the said officer shall give a certificate of payment, identified by the number or letter marked on the certificate, but not naming or describing the person on whose behalf payment is made.

(6) The certificate given on any such payment of tax shall be delivered by the person charged to the general commissioners or their clerk, at their office, before the time limited for payment, and a receipt shall be given for the same. The receipt shall be a sufficient discharge for the money certified to have been paid.

(7) Whenever the tax in respect of any such assessment becomes due and in arrear, the general commissioners shall cause that assessment to be added to the duplicates in the hands of one of the respective collectors to whom has been entrusted the collection of tax charged on persons by name, and the tax on that assessment shall be recovered and levied in the same manner, and under the like provisions and powers, as the tax charged on persons by name.

157.—(1) Income tax contained in an assessment for any year shall, except as otherwise provided in this section, be payable on or before the first day of January in that year, but tax included in an assessment for any year, which is signed or allowed on or after the first day of January, shall be deemed to be due and payable on the day next after the day on which the assessment is signed and allowed.

(2) (a) Tax for any year shall, in cases to which this subsection applies, instead of being payable on or before the first day of January in that year, or on such other date as is specified in subsection (1) of this section, be payable in two equal instalments, the first on or before the first day of January in that year, or on such other day as aforesaid, and the second on or before the following first day of July;

But where the assessment is not signed and allowed until after the said following first day of July, this subsection shall not have effect, and the tax shall be due and payable as provided in subsection (1) of this section;

(b) This subsection applies in cases of tax charged under No. I. (*r*) or No. II. of Schedule A and tax charged on any individual or firm under Schedule B in respect of lands occupied for husbandry only, and tax charged on any individual or firm under Schedule D, or the rules thereof, in respect of the profits or gains of any trade or of any profession or vocation, and tax charged on any individual in respect of any office or employment, whether under Schedule D or Schedule E, except individuals whose tax is deducted at definite intervals of less than half a

(*r*) See Act of 1927, s. 21, *infra*.

year, and weekly wage-earners whose tax is, under this Act, assessed and charged quarterly.

(c) The provisions of this Act as to the recovery of tax shall apply to each instalment of the tax, in the same manner as they apply to the whole amount of the tax.

(3) Railway companies in England and Ireland shall pay tax under Schedule D by four quarterly payments, that is to say, on or before the twentieth days of June, September, December, and March respectively, in each year.

(4) The tax payable by weekly wage-earners, who under the provisions of this Act are to be assessed and charged quarterly, shall be payable as prescribed by any regulations made by the Commissioners of Inland Revenue.

158.—(1) Every collector shall, when the tax becomes due and payable, make demand of the respective sums contained in the duplicates, and given to him in charge to collect, from the persons charged therewith, or at the places of their last abode, or on the premises in respect of which the tax is charged, as the case may require.

(2) A collector of tax under Schedules A and B shall, in the demand note delivered before payment thereof, distinctly describe the property to which the assessment relates, and specify the amount of the assessment and the rate at which the tax is charged thereon.

(3) On payment of the tax the collector shall, without charge, give a receipt under his hand, on the prescribed form, and if he has failed to give the particulars required by subsection (2) of this section in the demand note, he shall give them in the receipt.

159. Any person, on production to the proper officer of his notice or certificate of assessment, may pay to him in advance any sum therein charged upon him under Schedule D, and such officer, or request made at the time of payment, may make an allowance from the amount payable, calculated at the rate of two pounds ten shillings per cent. per annum on that amount for the period commencing on the day when the payment was made and ending on the day limited for payment, and such officer shall give a certificate of payment, specifying the amount discharged and the amount of the allowance, by reference to the name, or the number or letter, appearing on the notice or certificate of assessment respectively.

160. If the Commissioners of Inland Revenue make arrangements for the collection of tax by means of stamps in any case, they may prepare and issue any stamps required for the purpose, and the provisions (including penal provisions) of the Stamp Duties Management Act, 1891, as amended by any subsequent Act, and section sixty-five of the Post Office Act, 1908, shall apply to any such stamps.

161.—(1) If a person chargeable to tax is an infant, or dies—

(a) the parent, guardian or tutor of the infant shall be liable for the tax in default of payment by the infant; and

(b) the executor or administrator of the person deceased shall be liable for the tax charged on such deceased person,

and on neglect or refusal of payment any such person so liable as aforesaid may be proceeded against in like manner as any other defaulter.

(2) A parent, guardian or tutor who makes such payment shall be allowed all sums so paid in his accounts, and an executor or administrator may deduct all such payments out of the assets and effects of the person deceased.

(3) If the owner of any lands, tenements, hereditaments, or heritages, occupied by him at the time an assessment for any year under Schedule A was made, dies before payment of the tax, the heirs, executors, administrators, or assigns, or other persons who become entitled on his death, to the rents and profits thereof, shall be liable to pay all arrears of tax due at the time of the death, or, if no arrears are due, the tax payable for the period up to the time of the death, together with, in either case, the tax payable for the remainder of that year, according to their respective interests, without any new assessment.

162.—(1) If a person neglects or refuses to pay the sum charged, upon demand made by the collector in accordance with the assessments and warrants delivered to him, the collector shall, for non-payment thereof, distrain upon the lands, tenements and premises in respect of which the tax is charged, or distrain the person charged by his goods and chattels, and all such other goods and chattels as the collector is hereby authorised to distrain, without any further authority for that purpose than the warrant delivered to him on his appointment.

(2) For the purpose of levying any such distress, a collector may, after obtaining a warrant for that purpose, under the hands and seals of the general commissioners, break open, in the daytime, any house or premises, calling to his assistance any constable or other peace officer. Every such constable or officer shall, when so required, aid and assist the collector in the execution of the warrant and in levying the distress in the house or premises.

(3) A levy or warrant to break open shall be executed by, or under the direction of, and in the presence of, the collector.

(4) A distress levied by the collector shall be kept for five days, at the costs and charges of the person neglecting or refusing to pay.

(5) If the person aforesaid does not pay the sum due, together with the costs and charges, within the said five days, the distress shall be appraised by two or more inhabitants of the parish in which the distress is taken, or by other sufficient persons, and shall be sold by public auction by the collector or his deputy for payment of the sum due and all costs

and charges. The costs and charges of taking, keeping, and selling the distress shall be retained by the collector or his deputy, and any overplus coming by the distress, after the deduction of the costs and charges and of the sum due, shall be restored to the owner of the goods distrained.

(6) If a collector advances and pays over to the proper officer any sum of money on account of tax charged on some other person, whether at the request of that person or not, he may, in default of repayment to him of that sum at any time within six months after the payment, levy the tax in like manner as if that sum of money had not been advanced and paid.

163.—(1) No goods or chattels whatever, belonging to any person at the time any tax becomes in arrear, shall be liable to be taken by virtue of any execution or other process, warrant, or authority whatever, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the person at whose suit the execution or seizure is made, or to whom the assignment was made, pays or causes to be paid to the collector, before the sale or removal of the goods or chattels, all arrears of tax which are due at the time of seizure, or which are payable for the year in which the seizure is made:

Provided that where tax is claimed for more than one year, the person at whose instance the seizure has been made, may, on paying to the collector the tax which is due for one whole year, proceed in his seizure in like manner as if no tax had been claimed.

(2) In case of neglect or refusal to pay the tax so claimed or the tax for one whole year, as the case may be, the collector shall distrain the goods and chattels, notwithstanding the seizure or assignment, and shall proceed to the sale thereof, as prescribed by this Act, for the purpose of obtaining payment of the whole of the tax charged and claimed, and the reasonable costs and charges attending such distress and sale, and every collector so doing shall be indemnified by virtue of this Act.

164. If lands charged under Schedule A are unoccupied, and no distress can be found thereon at the time the tax is payable, the collector for the time being of the parish in which the lands are situate may at any future time when there is any distress to be found on the lands, enter, seize, and sell, under the same powers as if a distraint had been made on the lands at the time the tax became due and as if the occupier had been in occupation at that time.

165.—(1) If a person neglects or refuses to pay tax charged upon him by virtue of this Act within ten clear days after demand as aforesaid, and no sufficient distress can be found whereby the same may be levied, the general commissioners may, by warrant under their hands and seals, commit him to prison, there to be kept without bail until payment be made of that sum or security given to their satisfaction for payment thereof, together with such further sum, as the commissioners shall adjudge to be reasonable, for the costs and expenses of apprehending

and conveying him to prison; and every such person shall be detained and kept in prison according to the tenor and effect of the warrant.

(2) By direction of the Treasury or of the Commissioners of Inland Revenue, the general commissioners shall issue their warrant to the governor of the prison in which any defaulter is detained under their warrant, directing the liberation of the defaulter, and, on receipt thereof, the governor shall forthwith release and discharge him out of custody, if he is under detention for no other cause than as set forth in the warrant of commitment.

166. In Scotland, the following provisions shall have effect:—

(1) Upon certificate made to them by the collector for the division, district, or county, that any tax is due and not paid, the general commissioners, or sheriff or sheriff substitute for the county, shall issue a warrant for the said collector recovering the said tax by poinding the goods and effects of any person entered in the certificate as being a defaulter, and any person who has made default in paying any sum which may be levied on him in respect of tax may be entered in the certificate as a defaulter, notwithstanding that he was not named in the assessment to tax:

(2) The warrant shall be executed by the sheriff's officers of the county:

(3) The goods and effects so poinded shall be detained and kept on the ground, or at the house where the same were poinded, or in such other place of which the owner shall have notice, near to the said ground or house, as the officer so poinding the same shall think proper, for the space of five days, during which time the said goods and effects shall remain in the custody of the said officer, and liable to the payment of the whole tax in arrear and to the costs to be paid to the officer who poinded the same as hereinafter directed, unless the owner from whom the same was poinded shall redeem the same, within the said space of five days, by payment to the officer of the said tax in arrear and costs, to be settled in the same manner as if the said goods and effects had been sold as hereinafter directed:

(4) The goods and effects so poinded shall, after the expiration of the said five days, be valued and appraised by any two persons to be appointed by the officer (which two persons shall be obliged to value the same, under the penalty of forty shillings sterling for each neglect or refusal), and shall be sold and disposed of, at a sum not less than the value, by the officer who does poind the same:

(5) The value shall be applied, in the first place to the satisfaction and payment of the tax owing by the person whose goods are so poinded, and, in the second place, to the payment for the

trouble of the officer so poinding, at the rate of two shillings per pound of the tax for which the goods shall be so poinded unless the owner from whom the same were poinded shall redeem the same by payment of the appraised value, within the space of five days after the valuation, to the officer who poinded the same:

(6) In case any surplus remains of the price or value, after payment of the said tax, and after payment of what is allowed to be retained by the officer in manner herein directed, such surplus shall be returned to the owner from whom the goods were poinded:

(7) In case no purchaser appears at the said sale, then the said goods and effects, so poinded, shall be consigned and lodged in the hands of the sheriff of the county, or his substitute, and if not redeemed by the owner within the space of five days after the consignment in the hands of the said sheriff or sheriff substitute, the same shall be rouped, sold, and disposed of, by order of the sheriff, in such manner, and at such time and place, as he shall appoint, he always being liable to the payment of the tax to the said collector, and to payment to the officer who shall have poinded the same, for his trouble and expense, as before stated, and to the fees due to the officer, and being, in the third place, entitled to one shilling per pound of the value of the goods so disposed of, for his own pains and trouble, after preference and allowance of the said tax, and of what is appointed to be paid to the officer for his trouble:

(8) There shall also be allowed, to the officer so poinding, the expense of preserving the said goods and effects, and of maintaining the cattle, if there should happen to be any among the goods and effects so poinded, from the time of poinding the same, during the period allowed to the owner to redeem them, and also the expense of the sale; and in like manner the expense shall be allowed to the sheriff or sheriff substitute, for preserving and maintaining the goods or cattle poinded, during the period that the owner is allowed to redeem, after consignment in his hands, and until the sale thereof, and also the expense of the sale; and where no goods or effects, sufficient for payment of the said tax, can be found to be so poinded, and the person liable neglects or refuses to pay the same, in every such case the commissioners, or the sheriff or sheriff substitute, is hereby authorised, by warrant, to commit such person to prison, there to be kept, without bail, until payment shall be made or security for payment be given:

(9) Every auctioneer, or seller by commission, selling by auction, in Scotland, any goods or effects whatsoever by any mode of

sale at auction, shall, at least three days before he begins any sale by way of auction, deliver or cause to be delivered to the collector within whose district such sale is intended to be, a notice in writing, signed by such auctioneer or seller by auction, specifying therein the particular day when such sale is to begin, and the name and surname of the person whose goods and effects are to be sold, with his place of residence:

(10) If any such auctioneer or seller by auction shall sell any such goods and effects by way of auction, without delivering the notice hereinbefore required to be delivered, every such auctioneer, or person selling by auction, offending therein shall, for such offence, incur a penalty of fifty pounds.

167.—(1) No moveable goods and effects belonging to any person in Scotland, at the time any tax became in arrear or was payable, shall be liable to be taken by virtue of any poinding, sequestration for rent, or diligence whatever, or by any assignation, unless the person proceeding to take the said goods and effects pays the tax so in arrear or payable:

Provided that where the tax is claimed for more than one year the person proceeding to take the said goods and effects may on paying the tax for one whole year proceed as he might have done if no tax had been so claimed.

(2) If the said person neglects or refuses to pay the tax so in arrear or payable, or the tax for one whole year, as the case may be, the tax claimed shall, notwithstanding any proceeding at his instance for the purpose of taking the said moveable goods and effects, be recoverable by poinding and selling the said moveable goods and effects under warrant obtained in conformity with the provisions contained in the last preceding section.

168.—(1) Whenever any person has removed to or resides or happens to be in any parish other than the parish in which a charge to tax has been made upon him, and the said tax or any part thereof is in arrear and unpaid, the general commissioners, or the special commissioners acting as general commissioners, for the division comprising the last-mentioned parish, shall sign and transmit, through the Commissioners of Inland Revenue, a certificate of the amount of the tax in arrear and unpaid to the general commissioners, or the special commissioners acting as general commissioners, for the division comprising the first-mentioned parish, whether that parish is or is not in the same part of the United Kingdom, and the said last-mentioned commissioners shall cause the said amount of tax to be raised and levied by and under their warrant, together with the costs and charges attending the same:

Provided that where the first-mentioned parish is within the jurisdiction of the commissioners by whom the charge was made, those commissioners may, by certificate, authorise and direct the collector for that parish to raise and levy upon the person the tax charged and unpaid.

(2) Where no sufficient distress can be found within the division comprising the parish to which any such defaulter has removed or in which he resides or happens to be, the commissioners for that division shall, by warrant under their hands and seals, commit the defaulter to prison in the same manner and under the same powers as if the tax had been charged in that parish.

(3) In this section the expression "parish" shall, in Scotland, mean county or burgh, and with respect to the tax contained in any certificate as aforesaid the same shall, in Scotland, be recovered under the provisions of this Act for the recovery of tax in Scotland.

169.—(1) Any tax charged under the provisions of this Act may be sued for and recovered, with full costs of suit, from the person charged therewith in the High Court as a debt due to the Crown, or by any other means whereby any debt of record or otherwise due to the Crown can, or may at any time, be sued for and recovered, as well as by the summary means specially provided by this Act for levying the tax.

(2) Any tax assessed and charged quarterly under the provisions of this Act in respect of weekly wage-earners shall, without prejudice to any other method of recovery under this Act, be also recoverable summarily as a civil debt.

170.—(1) If the tax charged on tithes or teinds is not paid within the time limited, the collector and officer respectively may distrain upon the tithes or teinds or upon any other goods or chattels of the owner of the tithes or teinds wherever found, and may seize, take and sell so much thereof as is sufficient for levying the tax. Every such collector and officer shall have the like powers, for that purpose, as are exerciseable in relation to tax in other cases under this Act.

(2) (a) Where tax is charged on any composition for, or any rent or payment in lieu of, tithes or teinds, the occupier of the lands and premises charged with the composition, rent, or payments, shall be answerable for the tax so charged, and may deduct the same out of the next payment on account thereof.

(b) Where tax is charged on the profits of manors or royalties, markets or fairs, or on tolls, fisheries or any other annual or casual profits not distrainable, the owner or occupier or receiver of the profits thereof shall be answerable for the tax so charged, and may retain and deduct the same out of any such profits.

(c) In every such case the collector may distrain upon the persons respectively answerable, and may exercise all the powers in that behalf conferred by this Act.

171. Where, under the provisions of this Act, on an application made for the purpose either by a husband or a wife income tax has been charged on the profits or income of the wife as if she were not married, the power to distrain, in the case of non-payment of any income tax

payable by the wife, shall extend to the goods and chattels of the husband, as well as to the goods and chattels of the wife:

Provided that no distraint shall be made on the goods and chattels of the husband unless a written demand for payment shall first have been made on the husband, or left for him at his usual place of residence, and he shall have failed to pay the amount of tax payable by his wife within seven days of such demand.

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175.—(1) Every collector shall make out and deliver to the general commissioners, under his hand, on the prescribed form, a schedule of deficiencies, to be verified on oath, containing—

(a) the full name and address of every person within his collection from whom he has been unable to collect or receive the tax; and

(b) the particulars of the sum or sums charged upon, and remaining unpaid by every defaulter, and the particular reason for returning such sum or sums as in default; and

(c) the particulars of all sums which have been discharged from any assessments for causes specially allowed by this Act.

(2) The commissioners, after examining the collector on oath, shall make out—

(i) schedules of discharge containing any such sums discharged as aforesaid;

(ii) schedules of defaulters containing—

(a) the sum due from each defaulter, and the particulars thereof; and

(b) the sums not collected by reason of any neglect of the collector, and for which he may be held liable, and for which the parish ought to be re-assessed.

(3) The commissioners shall cause the respective particulars to be entered by their clerk in the respective schedules, on the prescribed forms, and shall sign and seal the schedules.

(4) The commissioners shall transmit all such schedules to the Commissioners of Inland Revenue, and the schedules shall be deposited at the head office of those Commissioners.

(5) A collector shall not insert in any schedule of deficiencies the name of any person as a defaulter to be returned into the High Court, unless he has made oath (which oath shall be endorsed and certified on the schedule) to the following effect, namely, that to the best of his knowledge and belief—

(a) the sum for which the person is returned in default, is due and wholly unpaid, to the collector or to any other person on his behalf; and

(b) there are not to be found any goods or chattels of any person liable to the payment of the tax in arrear, or any part thereof, whereby the same, or any part thereof, might be levied.

176.—(1) (a) A schedule of arrears may, on the expiration of forty days from the time of its delivery to the surveyor, be certified by the Commissioners of Inland Revenue to the High Court:

Provided that during the said period of forty days—

(i) notice shall be given by the collector to each defaulter, named in the schedule, that his name has been included therein; and

(ii) any such defaulter may pay his arrear to the collector, and any arrear so paid shall be discharged from the schedule.

(b) The collector may use any method, allowed by this Act, for the recovery of any arrear included in any such schedule, before the same is certified or forwarded to the High Court.

(2) A schedule of arrears delivered on oath by a collector and certified to the High Court, or a schedule of defaulters made, or purporting to be made, in pursuance of this Act and certified to the High Court by the Commissioners of Inland Revenue, shall be sufficient evidence of a debt due to the Crown, and sufficient authority to a judge of the High Court to cause process to be issued, against any defaulter named in any such schedule, to levy the sum in arrear and unpaid by him.

(3) The production of a schedule of arrears or a schedule of defaulters made, or purporting to be made, in pursuance of this Act, and purporting to contain the name of a defaulter, shall be sufficient evidence that the sum mentioned in the schedule was duly assessed and charged upon the defaulter, and that the same is in arrear and unpaid, and is due and owing to the Crown.

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Part IX.—Special Provisions applicable to Ireland.

186. The general provisions of this Act shall, in their application to Ireland, have effect subject to, and so far only as they are applicable consistently with, the special provisions contained in this Part of this Act.

187.—(1) The annual value of all tenements and rateable hereditaments with reference to which tax is to be charged under Schedules A and B shall be ascertained according to the respective surveys and valuations from time to time in force for the purposes of poor rates:

Provided that the annual value of lands for the purposes of Schedule B shall be taken to be—

(a) the judicial rent fixed under the Land Law (Ireland) Acts or any of them; or

(b) the annual interest payable to the Irish Land Commission in lieu of rent under the Land Purchase (Ireland) Acts or any of them; or

(c) the purchase annuity payable under the Land Purchase (Ireland) Acts or any of them,

in any case in which it is shown that the judicial rent, the annual interest

in lieu of rent, or the purchase annuity, as the case may be, is less than the annual value according to the survey or valuation aforesaid.

(2) The said tax under Schedule A shall be charged upon the landlord or immediate lessor of a tenement or rateable hereditament, but may, if it appears to the special commissioners to be necessary or proper, be charged upon the person rated to poor rates in respect of any such property.

(3) Tax under Schedule B shall be charged upon the occupier of a tenement or rateable hereditament.

(4) In the event of an appeal by a person who considers himself aggrieved by any such assessment, if it is proved to the satisfaction of the special commissioners by whom the appeal is heard, or the recorder or county court judge by whom the appeal is re-heard, as the case may be, that the annual value on which the assessment is based exceeds the annual rent at which the property in respect of which the assessment is made is worth to be let from year to year, relief shall be given by reducing the assessment and charging the tax on the amount on which it would have been charged if that rent had been adopted as the basis of the assessment instead of such annual value.

(5) If such annual rent at which the property is worth to be let from year to year exceeds the actual rent payable yearly by the tenant or occupier, the landlord or immediate lessor shall be assessed and charged, under Schedule A, on the amount of such actual rent only, and the tenant or occupier shall be assessed and charged under Schedule A on the difference, subject to any claim for exemption, abatement, or relief to which any of the aforesaid persons may respectively be entitled.

(6) Where a person who receives rent in respect of any hereditament which is exempt from being rated to poor rates, is liable to be rated in respect of that rent to the extent of one-half the poundage of any poor rate, the tax under Schedule A shall be assessed and charged upon him upon the full amount of that rent.

188. Assessments under Schedules A and B—

(a) shall be made by the surveyors or other officers acting in that behalf under the direction of the Commissioners of Inland Revenue;

(b) shall be made for and comprise the respective premises which are situate in an administrative county, county borough, county district, or such other district as the said Commissioners shall direct; and

(c) shall be signed by the special commissioners.

189.—(1) Assessments under Schedules D and E shall be made by such surveyors or other officers as the Commissioners of Inland Revenue shall appoint in that behalf.

(2) The special commissioners shall—

(a) sign and allow the assessments;

(b) appoint the times and places for hearing appeals against the assessments; and

(c) cause due notice of every such assessment and the amount thereof, and of the time and place for hearing any appeal against the same to be given by an officer of inland revenue to each person assessed.

190.—(1) The following persons, that is to say—

(a) the special commissioners acting in relation to the signing or allowing of any assessment, to the hearing and determining of any appeal, and to the making and signing of any duplicate and any warrant for collecting and levying the tax and sums of money charged; and

(b) all surveyors and other officers acting in relation to the making of any assessment, or to the assessing or charging of any person therein or thereby; and

(c) all persons named or appointed by the special commissioners to be respectively collectors of the tax and sums of money in relation to the collecting, levying, distraining for, or otherwise recovering of the same;

shall respectively have, use, and exercise all such and the like powers and authorities as any general commissioners, special commissioners, or additional commissioners, and as any surveyors, assessors, collectors, or other officers respectively have, or may use or exercise, in England in relation to the making or allowing of any assessment under this Act, or to the assessing or charging of any person, or to the hearing or determining of any appeal, or the collecting, levying, distraining for or otherwise recovering of the tax, so far as such powers and authorities, or any of them, are applicable, or may be adapted, to the performance of similar acts, matters, and things in Ireland.

(2) In addition to the aforesaid powers, any power which in England may be exercised by the general commissioners may, in Ireland, be exercised by the special commissioners.

(3) Any power which in England would, in recovery of tax, be exercised by a collector for a parish may, in Ireland, be exercised by any collector within the area for which he is appointed.

191.—(1) For the purpose of assessing tax chargeable under Schedules A and B, the secretary, or person acting as such, to the county council of an administrative county and the town clerk, clerk, or person acting as such, to a county borough or an urban district council shall, when required by the Commissioners of Inland Revenue, transmit to them, at the head office of the said Commissioners in Dublin, true copies of the last poor rates made by the county council, county borough council, or urban district council for their respective rating areas or any part thereof.

(2) The Commissioners of Inland Revenue shall pay to the said persons respectively the expenses of making all such copies, not exceeding the rate of two shillings and sixpence for every one hundred ratings.

(3) If any such person as aforesaid neglects to transmit such copies, after being required to do so by the Commissioners of Inland Revenue, he shall, for every such neglect, forfeit the sum of fifty pounds.

192.—(1) Every person shall, at the request of any surveyor, or other officer acting in the execution of this Act, produce to him any survey or valuation on which the rates for any administrative county, county borough, urban district, or part thereof are assessed or made, or any rate or assessment made under any Act relating to poor rates, which is in his custody or possession, and permit the surveyor or other officer to inspect the same and to take copies thereof, or extracts therefrom, without any payment.

(2) Any such person who, on request as aforesaid, refuses to produce any survey, valuation, rate, or assessment which is in his custody or possession, or to permit the inspection thereof, or the taking of such copies thereof or extracts therefrom as the surveyor or other officer may think fit, shall, for every such refusal, forfeit the sum of fifty pounds.

193.—(1) If in any case it appears to the Commissioners of Inland Revenue that any valuation for the purposes of poor rates which is for the time being in force is not correct (having reference to the principles according to which the same ought by law to have been made) with respect to all or any of the tenements or rateable hereditaments included therein, they may direct the commissioner of valuation to make or cause to be made, for the purposes of income tax, a re-valuation of those tenements or rateable hereditaments in accordance with the principles prescribed by law, and the commissioner of valuation shall, with all convenient speed, make the re-valuation or cause it to be made accordingly, and shall sign and transmit the same to the said Commissioners.

(2) Tax chargeable under Schedules A and B shall, after any such re-valuation, be assessed and charged in accordance therewith.

(3) A person assessed in accordance with any such re-valuation may, if aggrieved thereby, appeal against the assessment on the ground that the re-valuation is incorrect, and the special commissioners by whom any such appeal is heard, or the recorder, or county court judge by whom any such appeal is re-heard, may alter the re-valuation and the assessment, and make such an order with reference thereto, as they or he may think fit.

194. In assessing tax chargeable under Schedule A on the landlord or immediate lessor—

(a) If the amount or annual value, on which the assessment is made, is not less than the annual rent reserved or payable to him for the premises in respect of which the assessment is made, an allowance or abatement shall be made in respect of the amount of poor rates paid or borne by him for the same premises in the preceding year; and

(b) If the amount or annual value on which the assessment is made is less than the said rent, an allowance or abatement shall be

made of the sum by which the amount of the poor rate, added to the sum on which the assessment is made, exceeds that rent.

195. All appeals against assessments shall be heard and determined by the special commissioners, and their determination on any such appeal shall be final and conclusive, unless the person assessed requires that his appeal shall be re-heard as hereinafter provided, or unless, under the provisions of this Act, a case is required to be stated for the opinion of the High Court, and, in default of appeal by a person to whom notice of assessment, and of the time and place for hearing appeals, has been given, the assessment made on him shall be final and conclusive.

196.—(1) Any person who is aggrieved by the determination of the special commissioners in any appeal against an assessment made upon him may, on giving notice in writing to the surveyor, within ten days after such determination, require that his appeal shall be re-heard by the recorder or county court judge, as the case may be, having jurisdiction in the place where the assessment was made: and the special commissioners shall transmit to the said recorder or county court judge, as the case may be, any statement or schedule in their possession which was delivered to them for the purposes of the appeal.

(2) The said recorder or county court judge shall, with all convenient speed, re-hear and determine the appeal, and shall have and exercise the same powers and authorities in relation to the assessment appealed against, the determination, and all matters consequent thereon, as the special commissioners might have and exercise, and his determination thereon shall be final and conclusive.

(3) The recorder or county court judge shall make a declaration in the form of the declaration required to be made by a special commissioner as set out in Part I. of the Fourth Schedule to this Act.

197.—(1) After the expiration of the respective times for the hearing of appeals, the special commissioners shall cause duplicates of all assessments to be delivered, together with warrants under the hands and seals of two special commissioners, to the officers or other persons named by them, in the said warrants, to be collectors.

(2) The warrants shall appoint the officers or other persons named therein to be collectors of the tax and sums of money assessed and charged in the duplicates, and shall require and empower them to demand, collect, recover and levy the same.

198. Collectors of tax shall receive such reasonable remuneration for their services in the execution of this Act as the Treasury may prescribe.

199.—(1) Tax under Schedules A and B may be collected, recovered and levied by the collector by distress from the person charged, or from the occupier of the property charged, or upon the premises in respect of which the assessment is made, and all goods and chattels, to whomsoever the same may belong, found upon any such premises may be distrained

and sold for the recovery of any such tax; or such tax, or any arrears thereof, may be collected, recovered and levied in the same manner as other tax charged in Ireland under this Act may be collected, recovered and levied.

(2) Provided that tax charged under Schedule A in respect of any tenement or hereditament may be collected, recovered and levied by the collector from the landlord or immediate lessor of the premises charged, whether he be named in the assessment or not.

(3) Where an assessment under Schedule A has been made on the tenant or occupier of premises charged, the landlord or immediate lessor shall only be liable to proceedings under subsection (2) of this section, in default of payment by the tenant or occupier, and for so much only of the tax charged as is chargeable in respect of the rent payable yearly to him for the premises charged.

200. No administrative county, county borough, county district, or place in Ireland shall be answerable for the amount of the tax charged therein, or for any neglect or default of the collector in demanding or collecting the same, and no re-assessment shall be made for any arrears or loss occasioned by any such neglect or default.

201. Where a person liable to tax under Schedule A is authorised under this Act to retain tax from any annual payment made by him from which he is by law entitled to deduct any sum on account of poor rates, the tax to be retained shall be calculated by reference to the net sum payable by him after the allowance for poor rates.

202. Claims of exemption, abatement, or relief, and all claims for the repayment of tax under this Act, shall be made in such manner and form as the Commissioners of Inland Revenue may prescribe, and shall be made to, and finally determined by, the special commissioners, subject, as regards claims for exemptions, to the like appeal by way of re-hearing as in the case of assessments.

203. In computing the income of any person for the purposes of this Act, the computation, so far as concerns any rent derived from tenements or hereditaments chargeable under Schedule A, shall be made after allowing for the amount of any poor rates chargeable on that rent by way of deduction or otherwise.

204.—(1) If any landlord or immediate lessor of any tenement or hereditament charged to tax under Schedule A has paid the same and proves, to the satisfaction of the special commissioners, that the rent, or any part thereof, due or payable to him in respect of that tenement or hereditament, for the period for which that tax was charged, has been wholly and irrecoverably lost by reason of—

(a) the bankruptcy, insolvency, or absconding of the tenant or occupier by whom such rent was payable; or

(b) the fraudulent assignment or removal of his goods by the said tenant or occupier; or

(c) the tenement or hereditament being left waste and unoccupied,

he shall be entitled to be repaid such proportion of the said tax as he shall have paid in respect of the rent so lost; and the said commissioners shall issue an order for repayment, in like manner as in other cases of repayment.

(2) Any such claim for repayment shall be made within six months after the expiration of the year of assessment.

205. An action of ejectment for non-payment of rent shall not be defeated on the ground that the person liable to pay the rent is entitled under this Act to a deduction which would reduce the amount due by him below a year's rent.

206. A justice of the peace may administer any oath required or permitted by this Act to be taken before a commissioner or justice by any officer or person in any matter touching the execution of this Act.

Part X.—Miscellaneous.

207. Any person who, on his own behalf or on behalf of another person or body of persons, delivers a statement of the amount of the annual value or profits on which any tax is chargeable, shall, so far as the same are respectively applicable, observe the rules and directions contained in the Fifth Schedule to this Act.

208. The provisions in this Act contained which are applied to the tax under any particular Schedule shall, if also applicable to the tax under any other Schedule and not repugnant to the provisions for ascertaining, charging or levying the tax under such other Schedule, be applied in ascertaining, charging and levying tax under that Schedule, as if the application of those provisions thereto had been expressly and particularly directed.

209.—(1) In arriving at the amount of profit or gains for the purpose of income tax—

(a) no other deductions shall be made than such as are expressly enumerated in this Act;

(b) no deduction shall be made on account of any annual interest, annuity or other annual payment to be paid out of such profits or gains in regard that a proportionate part of the tax is allowed to be deducted on making any such payment.

(2) In arriving at the amount of profits or gains from any property described in this Act, or from any office or employment of profit, no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade or in any profession, employment or vocation.

210. In order to ensure the collection in due time of tax which may be granted for any year commencing on the sixth day of April, all such provisions contained in this Act, or in any other Act relating to tax (including super-tax), as were in force on the preceding day, shall have

full force and effect with respect to tax which may be so granted, in the same manner as if the said tax had been actually granted by Act of Parliament and the said provisions had been applied thereto by the Act.

211.—(1) Where in any year of assessment any half-yearly or quarterly payments have been made on account of any interest, dividends or other annual profits or gains, previously to the passing of the Act imposing the tax for that year, and tax has not been charged thereon or deducted therefrom, or has not been charged thereon or deducted therefrom at the rate ultimately imposed for the said year, the amount not so charged or deducted shall be charged under Schedule D in respect of those payments, as profits or gains not charged by virtue of any other Schedule, under Case VI. of Schedule D, and the agents entrusted with the payment of the interest, dividends or other annual profits or gains shall furnish to the Commissioners of Inland Revenue a list containing the names and addresses of the persons to whom payments have been made and the amount of those payments, upon a requisition made by those Commissioners in that behalf.

(2) Any person liable to pay any rent, interest or annuity or to make any other annual payment, shall be authorised to make any deduction on account of tax for any year of assessment which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made, on the occasion of the next payment of the rent, interest or annuity, or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorised to make, and shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing tax for the year had been in force.

212. No provision contained in the County Rates Act, 1852, or in the Union Assessment Committee Act, 1862, shall authorise any assessment committee under those Acts to require any assessor, collector or other person employed in the assessment or collection of tax to make or transmit, or to permit any other person to make, copies of or extracts from any assessment, rate or rate book or any document relating to the assessment or collection of tax upon profits of trade in respect of quarries, mines, ironworks, gasworks or other concerns in the nature of trade or manufacture chargeable under Schedule A, nor shall any such person be required to attend before any such committee to produce any such assessment, rate, rate book or document, or to be examined concerning the same.

213. No letters patent granted or to be granted by the Crown to any person, city, borough, or town corporate of any liberty, privilege, or exemption from subsidies, tolls, taxes, assessments or aids, and no statute which grants any salary, annuity or pension to any person free

of any taxes, deductions or assessments, shall be construed or taken to exempt any person, city, borough or town corporate, or any of the inhabitants of the same, from tax, and all non obstantes in any such letters patent or statute made or to be made to the contrary effect shall be void.

214.—(1) Warrants and precepts of the general commissioners shall be executed by the respective persons to whom they are directed in any part of the same county within any division of which those commissioners have jurisdiction.

(2) Constables and other peace officers shall aid in the execution of this Act, and obey and execute such precepts and warrants as are directed to them in that behalf by the respective commissioners under the authority of this Act.

215. (*Provisions as to forms.*)

216.—(1) An assessment, charge, warrant or other proceeding which purports to be made in pursuance of this Act shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

(2) An assessment or a charge made upon an assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

(i) the name or surname of the person liable; or

(ii) the description of any profits or property; or

(iii) the amount of the tax charged;

(b) by reason of any variance between the notice and the certificate of charge or assessment:

Provided that in cases of charge the notice of charge shall be duly served on the person intended to be charged, and the notice and certificate shall respectively contain, in substance and effect, the particulars on which the charge is made; and every such charge shall be heard and determined on its merits by the general commissioners.

217. No receipt, certificate or payment, affidavit, appraisement or valuation given or made in pursuance and for the purposes of this Act, and, in England, no bond or other security given under this Act by a collector or other person in respect of the collection, accounting for, or remitting of tax, shall be liable to any stamp duty.

218. Assessments, duplicates of assessments, minute books, and other public books and papers relating to tax in the custody or possession of any clerk, assessor, or collector, or the legal representatives of any person who has died or shall die during the holding of any such office, or after his removal from the same, or of his agent or attorney, or of any

other person, shall be the property of the general commissioners acting in their respective divisions for the time being, and shall be placed with them and remain in their custody and possession, or the custody and possession of their respective clerks for the time being, or of such other person as the respective commissioners for the time being may from time to time at their meetings direct.

219.—(1) A person who has in his custody or possession any book or papers relating to tax shall, within one month next after notice in writing from the Commissioners of Inland Revenue requiring him to do so, deliver them to the person named in the notice, and, if he fails to do so, shall, for every such offence, incur a penalty of fifty pounds.

(2) The receipt of the person named in the notice shall be a sufficient discharge to the person delivering the books or papers.

220.—(1) Notices required to be affixed, delivered or served may be issued to the respective assessors by the surveyors of the districts in which the notices are required, for the purpose of being so affixed, delivered or served.

(2) The issue to the assessors of any such notices by a surveyor shall be as effectual as delivery to them by the general commissioners concerned.

(3) Any directions which have been allowed by the respective commissioners with reference to the time and manner of fixing, delivering or otherwise serving the notices, and the persons on whom they are to be served, shall, when given by the surveyor to a collector or assessor, be observed by him.

(4) A notice or form which is to be served on a person may be either delivered to him or left at his usual or last known place of abode.

(5) A notice to a person to be given by a surveyor may be served by registered post.

(6) A notice to be given by the Commissioners of Inland Revenue may, by their order, be signed by one of their secretaries or assistant secretaries, and if purporting to be so signed by their order shall be valid and effectual.

(7) Notices to be given or delivered to, or served on, the general commissioners or the additional commissioners shall be valid and effectual if given or delivered to or served on their clerk.

(8) Provided that—

(a) any notice or other document to be given, served, sent or delivered, under this Act or any Act relating to income tax, may be served by post in such cases as the Commissioners of Inland Revenue direct by regulations to be made by them for the purpose; and

(b) any notice or other document to be given, served, sent or delivered to or on an employed person may be served by post at his place of employment.

221.—(1) No proceedings shall be commenced against any person for the recovery of any fine, penalty or forfeiture under this Act except by order of the Commissioners of Inland Revenue and in the name of an officer, or in England in the name of the Attorney-General for England, in Scotland in the name of the Lord Advocate, and in Ireland in the name of the Attorney-General for Ireland.

(2) Any fine or penalty under this Act may, except as otherwise provided, be sued for and recovered, with full costs of suit, in the High Court, and any such penalty shall be sued for by information.

(3) Proceedings in the High Court for the recovery of any fine or penalty, and proceedings in England, before the general commissioners, and in Scotland either before the general commissioners or before the sheriff for the recovery of any penalty which is not recoverable in the High Court, may be commenced within three years (*r*) next after the fine or penalty was incurred.

(4) Where a pecuniary penalty not exceeding twenty pounds, or a penalty exceeding twenty pounds which is directed to be added to the assessment, is recoverable in the High Court, that penalty may, in lieu of being so recovered, be recovered in England before the general commissioners, and in Scotland either before the general commissioners or before the sheriff for the county where the offence was committed, by proceedings to be commenced within twelve months (*r*) next after the penalty was incurred.

(5) The proceedings before any general commissioners or any sheriff shall be by way of information in writing, made to them, and upon a summons to the person accused to appear before them at such time and place as they shall fix, and they shall examine into the matter of fact, and hear and determine the same in a summary way, and they shall give judgment for the penalty, or such part thereof as they shall think proper to mitigate the same to, and shall assess the penalty on the person accused by way of supplementary assessment, and the penalty shall be levied in like manner as tax.

The adjudication on such proceedings shall be final and conclusive, and the proceedings and decree of the said commissioners or sheriff shall not be removable, by any process whatever, into any court of law.

222.—(1) The Commissioners of Inland Revenue may, in their discretion, mitigate any fine or penalty, or stay or compound any proceedings for recovery thereof, and may also, after judgment, further mitigate or entirely remit the fine or penalty, and may order any person imprisoned for any offence to be discharged before the term of his imprisonment has expired. The Treasury may mitigate or remit any such fine or penalty, either before or after judgment.

(2) Moneys arising from fines, penalties and forfeitures, and all costs, charges and expenses payable in respect thereof or in relation thereto

(*r*) Extended to six years for tax charged for 1920—21 and subsequent years, Act of 1923, s. 23 (1).

respectively, shall be accounted for and paid to the Commissioners of Inland Revenue or as they direct.

223. Where an increased rate of tax is imposed as a penalty, or as part of or in addition to a penalty, the penalty and increased rate of tax may be added to the assessment, and collected and levied in like manner as any tax included in such assessment may be collected and levied.

224. The provisions of this Act shall not affect any criminal proceedings for any felony or misdemeanour.

225.—(1) If any person, by himself or by any person in his employ, obstructs, molests, or hinders—

(a) an officer or any person employed in relation to any duty of income tax in the execution of his duty, or of any of the powers or authorities by law given to the officer or person; or

(b) any person acting in the aid of an officer or any person so employed;

he shall, for every such offence, incur a fine of one hundred pounds.

(2) Without prejudice to any other mode of recovery, the fine imposed under this section may be proceeded for and recovered in the same manner, and, in the case of summary proceedings, with the like power of appeal, as any fine or penalty under any Act relating to the excise.

226. A surveyor who—

(a) wilfully makes a false and vexatious surcharge of tax; or

(b) wilfully delivers, or causes to be delivered, to the general commissioners a false and vexatious certificate of surcharge, or a false and vexatious certificate of objection to any supplementary return in a case of surcharge; or

(c) knowingly or wilfully, through favour, undercharges or omits to charge any person; or

(d) is guilty of any fraudulent, corrupt, or illegal practices in the execution of his office,

shall, for any such offence, incur a penalty of one hundred pounds, and on conviction shall be discharged from his office.

227. If any person, for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of tax, either for himself or for any other person, or in any return made with reference to tax, knowingly makes any false statement or false representation, he shall be liable, on summary conviction, to imprisonment for a term not exceeding six months with hard labour.

228. If in Scotland or Ireland any person, upon any examination on oath, or in any affidavit or deposition authorised by this Act, wilfully and corruptly gives false evidence, or wilfully and corruptly swears any matter or thing which is false or untrue, he shall on conviction be subject and liable to such punishment as persons convicted of perjury are subject and liable to.

229.—(1) A commissioner, sheriff, sheriff depute or sheriff substitute, clerk, surveyor, assessor, or collector who acts, or is employed, in the execution of this Act, shall not be liable to any penalty in respect of such execution other than is by this Act provided.

(2) Where any civil or criminal proceeding, against any officer or person employed in relation to any duty of income tax, on account of the seizure or detention of any goods, is brought to trial, and a verdict or judgment is given thereupon against the defendant, if the court or judge certifies that there was probable cause for the seizure, the plaintiff shall not be entitled to any damages, besides the goods seized, or the value thereof, nor to any costs, and the defendant shall not be liable to any punishment.

230.—(1) Anything required under this Act to be done by the Treasury may be signified under the hand of a secretary or assistant secretary to the Treasury.

(2) Anything required under this Act to be done by the general commissioners, the additional commissioners, the special commissioners, or any other commissioners may, save as otherwise expressly provided by this Act, be done by any two or more commissioners.

(3) Any general commissioner may administer an oath required or permitted to be taken before the general commissioners under this Act by any officer or person in any matter touching the execution of this Act.

233. In any proceedings under or arising out of this Act before any court or person empowered to take evidence, primâ facie proof of the fact that any person was a commissioner or officer may be given by proving that, at the time when any matter in controversy in any such proceedings arose, that person was reputed to be or had acted as a commissioner or officer.

234. In the event of a sufficient number of general commissioners not attending to sign and allow, in due time, the assessments and duplicates of the tax for any parish, any two general commissioners acting within the same county shall sign and allow any such assessments or duplicates.

235. All matters within the jurisdiction of the High Court of Justice under this Act shall be assigned in England and Ireland to the King's Bench Division of the High Court, and in Scotland to the Court of Session sitting as a Court of Exchequer.

236. All such regulations of the Commissioners of Inland Revenue as relate to—

(a) the assessment, charge, collection and recovery of super-tax;

(b) *allowance or deduction* (*s*) or relief in respect of quarterly assessments on weekly wage-earners;

(*s*) Words substituted, Finance Act, 1920, s. 32, and Third Sched.

(c) the assessment and collection of tax in the case of quarterly assessments on weekly wage-earners; or

(d) service by post;

shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days, or in the case of a regulation relating to super-tax within the next subsequent forty days, on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, His Majesty in Council may annul the regulation, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

237. In this Act, unless the context otherwise requires—

"Annuity fund" means, where an annuity fund is not kept separately from the life assurance fund of an assurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns to the Board of Trade, under the Assurance Companies Act, 1909;

"Assurance company" means any persons or body of persons to which the Assurance Companies Act, 1909, applies;

"Assessor" includes a surveyor acting as assessor when empowered so to act;

"Body of persons" means any body politic, corporate, or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate;

"City division" means a division consisting of any city, borough, town, or other place, under the separate jurisdiction of any body of general commissioners;

"County division" means a division other than a city division and consisting of any county, riding or shire, or of any hundred, rape, lathe, wapentake, or other division of a county, riding, or shire, under the separate jurisdiction of any body of general commissioners;

"Foreign life assurance fund" means any fund representing the amount of the liability of an assurance company in respect of its life assurance business with policy-holders and annuitants residing out of the United Kingdom whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the United Kingdom, and, where such a fund is not kept separately from the life assurance fund of the company, means such part of the life assurance fund as represents the liability of the company under such policies and annuity contracts; such liability being estimated in the same manner as it is estimated for the purposes of the periodical returns of the company to the Board of Trade, under the Assurance Companies Act, 1909;

"Gazette" means, as the context requires, "London Gazette," "Edinburgh Gazette" or "Dublin Gazette";

"Incapacitated person" means any infant, married woman, lunatic, idiot, or insane person;

"Land Tax Commissioners" means the commissioners appointed, under authority of Parliament, for executing the Acts relating to land tax;

"Life assurance business" includes the business of granting annuities;

"Parish" means any city, town, ward, township, tithing, parish, place or precinct, or part thereof, for which a separate assessment of income tax has been, or can be, made, or for which an assessor or collector has been, or can be, appointed;

"Surveyor" means a surveyor of taxes and includes an inspector of taxes;

"Trade" includes every trade, manufacture, adventure or concern in the nature of trade;

"Weekly wage-earner" means a person who receives wages which are calculated by reference to the hour, day, week or any period less than a month, at whatever intervals the wages may be paid, or who receives wages, however calculated, which are paid daily, weekly, or at any less intervals than a month;

"Year of assessment" means, with reference to any tax, the year for which such tax was granted by any Act granting duties of income tax.

238. The Acts mentioned in the Seventh Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule:

Provided that—

(a) Any notice, form, order, rule, regulation or direction prescribed, made, issued or given under any enactment repealed by this Act shall continue in force as if it had been prescribed, made, issued or given under this Act, and may be repealed, revoked, varied or amended accordingly:

(b) Any document referring to any Act or enactment repealed by this Act shall be construed as referring to this Act or to the corresponding enactment of this Act:

(c) Any commissioner, officer or person appointed to act or employed under or by virtue of any enactment repealed by this Act in relation to duties of income tax shall continue and be deemed to have been appointed or employed under or by virtue of this Act:

(d) Where any provision repealed by this Act so far as it relates to income tax, and reproduced in this Act in relation to income tax, authorises or requires any appointment to be made or action to be taken, or imposes any penalty both in relation to income tax and in relation to any other tax or

duty as respects which the provision in question is not repealed, then nothing in this Act shall authorise or require separate appointments or separate action or the imposition of penalties, both under the provision so repealed and under the corresponding provision of this Act, but the two provisions shall have effect as though they continued to be contained in one enactment relating both to income tax and to such other tax or duty as aforesaid:

(e) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

239.—(1) This Act may be cited as the Income Tax Act, 1918.

(2) This Act shall come into operation on the sixth day of April nineteen hundred and nineteen:

Provided that the provisions of this Act shall not apply to any duties of income tax granted by Parliament prior to the commencement of this Act, or to any enactment, matter or thing touching any such duties, and in respect of any such duties the Acts applicable thereto which are repealed by this Act shall have the same effect as if this Act had not been passed.

SCHEDULES.

FIRST SCHEDULE.

Schedule A.

Tax under Schedule A shall be charged in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, for every twenty shillings of the annual value thereof.

Rules applicable to Schedule A.

Nothing in these rules shall affect the valuation of lands, tenements or hereditaments within the administrative county of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is by that Act made conclusive for the purposes of Income Tax, and the following rules, that is to say, the general rule of No. I., Rules 1 and 3 of No. II., Rules 1 to 14 of No. IV., Rules 6 and 7 of No. VII., and Rules 5, 6 and 7 of No. IX. (which Rules are distinguished by an asterisk) and any other rule which relates to the ascertainment of the value of such lands, tenements or hereditaments shall not apply within the administrative county of London, except in the case of hereditaments which are not included in any such valuation list or which are chargeable according to profits and not according to gross value, and except as

respects the mode of charging the occupiers of land subject to a tithe rentcharge in respect of such tithe rentcharge.

No. I.—General Rule for estimating the annual value of Lands, Tenements, Hereditaments or Heritages.

*In the case of all lands, tenements, hereditaments or heritages capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value (except the properties mentioned in No. II. and No. III. of this Schedule), the annual value shall be understood to be:—

(1) The amount of the rent by the year at which they are let, if they are let at rackrent and the amount of that rent has been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment; or

(2) If they are not let at a rackrent so fixed, then the rackrent at which they are worth to be let by the year.

No. II.—Rules for estimating the annual value of certain Lands, Tenements, Hereditaments or Heritages which are not to be charged according to the preceding General Rule, and for determining the person chargeable (x).

*1. In the case of tithes, if taken in kind, ...

2. In the case of dues and money payments in right of the church or by endowment, or in lieu of tithes (not being tithes arising from lands), and all teinds arising in Scotland, ...

*3. In the case of tithes arising from lands, if compounded for, and all rents and other money payments in lieu of tithes arising from lands (except rentcharges confirmed under the Tithe Act, 1836), ...

4. . . . .

5. In the case of manors and other royalties, including all dues and other services or other casual profits (not being rents or other annual payments reserved or charged), ...

6. In the case of fines received in consideration of any demise of lands or tenements (not being parcel of a manor or royalty demisable by the custom thereof), ...

. . . . Provided that if the person chargeable satisfies the general commissioners for the division that any part of the fines has been applied as productive capital, on which a profit has arisen or will arise which is otherwise chargeable for the year for which the assessment is made, the commissioners may discharge the amount so applied from the profits liable to assessment and charge under this rule (x).

(x) See Act of 1926, s. 28 and 3rd Sched.; the words indicating the sources of income and the proviso to rule 6, which "shall be deemed to be a rule of Sched. D, Case III.," appear to be the only parts of No. II. that are not obsolete.

7. In the case of all other profits not before enumerated (other than profits liable to deduction in pursuance of rules 1 and 4 of No. VIII. of this Schedule) arising from lands, tenements, hereditaments or heritages not being in the actual possession or occupation of the person to be charged, ...

8. . . . .

No. III.—Rules for estimating the annual value of certain other Lands, Tenements, Hereditaments, or Heritages which are not to be charged according to the preceding General Rule (y).

1. In the case of quarries of stone, slate, limestone, or chalk, ...

2. In the case of mines of coal, tin, lead, copper, mundic, iron, and other mines, ...

3. In the case of ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of the like nature having profits from or arising out of any lands, tenements, hereditaments or heritages, ...

4. Tax under the above rules shall be assessed and charged on the person or body of persons carrying on the concern, or on the agents or other officers who have the direction or management of the concern or receive the profits thereof.

5. Tax shall be assessed and charged on the value of the produce of the concern, before any distribution to any person entitled to any share thereof, or to the owner of the soil or property, or to any creditor or other person whatever who has a claim on the profits, and every such person shall allow, out of the produce or value, a proportionate deduction of the tax charged.

6. . . . .

7.—(1) The computation in respect of any such mine carried on by a company of adventurers shall be made and stated jointly in one sum, but any adventurer may be assessed and charged separately if he makes a declaration of his proportion or share in the concern for that purpose.

(2) An adventurer so separately assessed and charged may set off against his profits from one or more of such concerns the amount of his loss sustained in any other such concern as certified by the commissioners for the division where the loss was sustained.

(3) In any such case one assessment and charge only shall be made on the balance of profit and loss, and shall be made in the parish where the adventurer is chargeable to the greatest amount.

8. . . . .

9. . . . .

(y) See Act of 1926, s. 28 and 3rd Sched.; the words indicating the sources of income and rules 4, 5 and 7, which "shall be deemed to be rules of Sched. D, Case I., so far as regards" those sources, appear to be the only parts of No. III. that are not obsolete.

No. IV.—Rules for estimating Annual Value.

*1. Where—

(a) a landlord is subject to an agreement to pay or satisfy out of the rent reserved on any lands or tenements, any public local rates, taxes, or assessments, which by law are charged upon the occupier, or any composition for tithes; or

(b) any person entitled to a rent or other annual payment in lieu of tithes (other than a tithe rentcharge confirmed under the Tithe Act, 1836), or to any composition for tithes, pays or satisfies out of the amount thereof any such public local rates, taxes or assessments charged upon the same;

the annual value shall be estimated exclusive of any such public local charges, or composition for tithes, bonâ fide paid by the landlord or other person aforesaid, respectively, in and for the year preceding the year of assessment.

*2. Where the owner is also occupier of the lands or tenements, and has paid any such public local charges or composition for tithes in respect thereof, the annual value shall be estimated in like manner.

*3. If the assessor is satisfied with the amount contained in any account or statement of the annual value of properties to be assessed under this Schedule delivered under this Act, he shall make an assessment on that amount, and if he is not satisfied, or if no such account or statement has been delivered, he shall estimate to the best of his judgment the annual value of the property and make an assessment thereon.

*4. Where the annual value is to be ascertained according to the general rule of No. I. of this Schedule, and that value cannot be otherwise ascertained, and the last poor rate in the parish was made throughout on the annual value as the same would be estimated under the said general rule or on a proportionate part thereof, the assessor may make his assessment by reference to the annual value for the purposes of the poor rate, but in all cases on the full amount of the annual value instead of on a proportionate part thereof.

*5. Where any dwelling-house or tenement, together with the offices, gardens, and lands occupied therewith, or any lands separately occupied, is of an annual value under ten pounds, the assessor may estimate the annual value to the best of his judgment and make an assessment thereon without requiring a statement of the annual value to be delivered, unless the surveyor objects to his estimate and requires a notice for that purpose to be served.

*6. An assessor who, not having required such statement, neglects to estimate the true annual value of any such property and to assess the same according to this Act, shall forfeit a sum not exceeding ten pounds.

*7. If any tenant at rackrent produces to the assessor the lease or agreement in writing under which he immediately holds any premises chargeable under the general rule of No. I. of this Schedule, and it appears therefrom that the premises have been let within the seven preceding years, and that no consideration in money other than the rent reserved is contained in the lease or agreement, the assessor may make his assessment according to that rent.

*8. The tenant shall produce his lease or agreement to the assessor on request by him.

*9. Any such assessment shall not be binding if it appears to the commissioners—

(a) that the lease or agreement does not express the full consideration in money or value for the demise or the rent bonâ fide paid for the same; or

(b) that the rent reserved is less than the rackrent on account of repairs or improvements effected, or to be effected, by the tenant or his assigns; or

(c) that the lease or agreement was in any other respect made with intent to conceal the annual value of the premises, or to diminish the estimate to be made thereon, or has been assigned to the tenant or any former tenant for any consideration in money or value paid or agreed to be paid.

*10. In making any such assessment regard shall be had to—

(a) any increase of the amount of the rent reserved by reason of any agreement by the landlord to discharge the tenant's rates, taxes, assessments, or duties hereinbefore mentioned;

(b) any decrease in the amount of the rent by reason of any agreement by the tenant to discharge those of the landlord;

(c) any decrease in the amount of the rent by reason of any expenses incurred or to be incurred by the tenant or any assigns, whether mentioned or not in the lease or agreement; and

(d) any deductions to be made on account of any public rate or assessment hereinbefore described.

*11. In the case of a demise for years of land made in consideration of a rent reserved and of improvements to be made at the cost of the tenant, if it is proved to the satisfaction of the general commissioners that the rent reserved was, in view of the improved value expected to be realised at the cost of the tenant, based upon an estimate of the mean annual value of the land throughout the term, and that the rent, so computed, is fixed and payable at the same amount in each year so that in consequence thereof the rent payable exceeds the annual value at the commencement of the term, the annual value for each year of assessment during the term of the demise shall be taken to be the amount of the rent reserved without variation, subject to the deductions allowed by this Act.

*12. A tenant being—

(a) a tenant at rackrent under a parol demise from year to year within the period defined in the general rule of No. I. of this Schedule; and

(b) a tenant who has neither the custody, nor the power to call for the production, of the lease or agreement under which he holds premises demised within the said period and who proves to the commissioners his inability to produce the same,

shall deliver to the assessor an account in writing, signed by him, stating the amount of the annual rent reserved on any such demise, and thereupon the same rules shall apply as in the case of a tenant who produces to the assessor his lease or agreement.

*13. Lands held for a longer period than seven years, by a tenant at will or under a demise from year to year, shall be estimated and assessed at their annual value, unless the tenant proves to the satisfaction of the general commissioners that they are held under a demise which was commenced by an agreement made, and a rent fixed, within the period of seven years, on the determination of the former demise of those lands, by due notice within that period.

*14. A person who wilfully—

(a) delivers any such account as aforesaid, which is false; or

(b) refuses, neglects, or omits to produce any lease or agreement with intent to conceal the annual value of the premises therein comprised, or to diminish the estimate to be made thereon,

shall forfeit the sum of twenty pounds, and may be charged in treble the tax chargeable, to be computed on the annual value of the premises and included in the assessment.

15. In Scotland—

(a) Every tenant of lands, tenements, or heritages shall, within ten days after service by the assessor of a notice requiring him to do so, produce to the assessor the tack, lease, or other agreement or articles in writing under which he holds:

(b) If any such documents of title are not within the custody, possession, or power of the tenant, or if there are no such documents, the tenant shall deliver to the assessor within the time limited as aforesaid, a written note stating the actual rent annually reserved, and any other valuable consideration given to the landlord for the tenancy:

(c) A tenant who wilfully neglects to comply with any such notice shall be liable to a penalty of treble the tax chargeable on such lands, tenements, or heritages:

(d) On the production of any such documents of title, the assessor may make his assessment according to the rent therein reserved, or if they are not produced, upon the rent reserved as disclosed in the written note, if he is satisfied that there was no other valuable consideration:

(e) If no written note is delivered, or if the assessor is not satisfied therewith, the assessor shall make an assessment in accordance with the provisions of this Act:

(f) If a farm, occupied by any such tenant, is distant more than ten miles from the dwelling-house of the assessor, the tenant may leave his lease or written note with the nearest justice of the peace, or with the minister of the parish in which the farm is situate, and the justice or minister, as the case may be, shall show the lease or note of the rent to the assessor when required.

No. V.—Rules in respect of Deductions and Allowances.

1. The following deductions and allowances shall be made under this Schedule:—

(a) The amount of the tenths and first fruits, duties, and fees on presentations paid by any ecclesiastical person within the year preceding the year of assessment:

(b) The amount paid for procurations and synodals by ecclesiastical persons on an average of seven years preceding the year of assessment:

(c) The amount expended during the year preceding the year of assessment on repairs of any collegiate church or chapel, or chancel of a church, or of any college or hall in any university of the United Kingdom, by any ecclesiastical or collegiate body, rector, vicar, or other person bound to repair the same:

(d) The amount paid for public local rates, taxes, and assessments charged in respect of a rentcharge under the Tithe Act, 1836, for the year of assessment, except where the owner of the rentcharge has been charged therefor under rule 7 of No. VII. of this Schedule:

(e) The amount of any unredeemed land tax charged on lands, tenements, hereditaments, and heritages, under the Land Tax Act, 1797:

(f) The amount charged on lands, tenements, hereditaments, and heritages, by a public rate or assessment in respect of draining, fencing, or embanking:

(g) The amount expended by the landlord or owner of lands on an average of the twenty-one preceding years, in the making or repairing of sea walls or other embankments necessary for the preservation or protection of the lands against the encroachment or overflowing of the sea or any tidal river, although the sums expended may not have been charged on the lands by a public rate or assessment:

Provided that this rule shall not apply within the administrative county of London so far as respects the deductions allowed by the Valuation (Metropolis) Act, 1869.

2. The foregoing allowances shall (unless the payments to which they relate, or any part thereof, be made by a tenant) be made from the assessment on the property concerned, save as is hereinafter provided.

3. The allowances granted under paragraphs (a), (b) and (c) of rule 1 may be granted to the body or person therein described in one sum, either by deduction from the assessment, if any, on such body or person, or by repayment, but any allowance made under rule 1 on account of charges payable in respect of tithe rentcharge shall be granted by repayment only.

4.—(1) Where it is shown to the satisfaction of the Commissioners of Inland Revenue that the landlord of lands in Scotland is by law—

(a) charged with any public rates, taxes, or assessments which in England are by law a charge on the occupiers of lands; or

(b) charged with any public rates or taxes or other public burdens, the like whereof are not chargeable on lands in England,

the said Commissioners shall cause such relief to be given in respect of tax as is just and reasonable having regard to the additional burden on the landlord.

(2) Relief under this rule may be given in accordance with such regulations as the said Commissioners may prescribe, either by abatement from the assessment, or by repayment of tax.

5. The person entitled to any of the foregoing allowances which have not been made by way of deduction or abatement from the assessment and which may be made by repayment, may claim the allowance at any time within three (*u*) years after the expiration of the year of assessment, before the general commissioners of the division in which the property charged with the payments is situate.

6. The general commissioners on proof that the claimant is entitled to the allowance shall certify the particulars and amount thereof to the special commissioners, who shall issue an order for repayment.

7.—(1) Where tax is charged upon annual value estimated otherwise than by relation to profits, the following provisions shall have effect:—

(a) In the case of an assessment on lands inclusive of the farmhouse and other buildings (if any), the amount of the assessment shall, for the purposes of collection, be reduced by a sum equal to one-eighth part thereof; and

(b) In the case of an assessment upon any house or building (except a farmhouse or building included with lands in assessment), the amount of the assessment shall, for the purposes of collection, be reduced—

(i) *Where the owner is occupier or chargeable as landlord, or where a tenant is occupier and the landlord has undertaken to bear the cost of repairs, by a sum equal to the amount of the authorised reduction hereinafter mentioned; and*

(*u*) Extended to six years, Finance Act, 1923, s. 30 (1).

(ii) *Where a tenant is occupier and has undertaken to bear the cost of repairs, by such a sum, not exceeding the amount of the authorised reduction, as may be necessary to reduce the amount of the assessment to the amount of rent payable by him:*

Provided that the amount by which an assessment is reduced shall not, in the case of an assessment exceeding the amount of forty pounds, be less than it would have been if the amount of the assessment had been forty pounds (*v*).

(2) Where the amount of the assessment in the case of lands (inclusive of the farmhouse and other buildings) is more than one-eighth *below the rent* (*v*) and in the case of any house or building (except a farmhouse or building included with lands in assessment) is *less than the rent by a sum greater than the authorised reduction which would be allowable if the assessment were on the amount of the rent* (*v*) after deducting from such rent any outgoing which should by law be deducted in making the assessment, this rule shall not apply.

(3) (*v*) The authorised reduction for the purposes of this Rule shall be—

(a) Where the amount of the assessment does not exceed forty pounds.	A sum equal to one-fourth part of the amount of the assessment.
(b) Where the amount of the assessment exceeds forty pounds but does not exceed one hundred pounds.	A sum equal to one-fifth part of the amount of the assessment.
(c) Where the amount of the assessment exceeds one hundred pounds.	Twenty pounds, together with a sum equal to one-sixth part of the amount by which the assessment exceeds one hundred pounds.

8.—(1) If the owner of any land or houses to which this rule applies shows that the cost to him of maintenance, repairs, insurance, and management, according to the average of the preceding five years, has exceeded, in the case of land, one-eighth part of the annual value of the land as adopted under this Schedule, and, in the case of houses, *the authorised reduction* (*v*), he shall be entitled in addition to any reduction of the assessment for the purposes of collection, on making a claim for the purpose, to repayment of the amount of the tax on the excess.

(2) For the purposes of this rule, the term "maintenance" shall include the replacement of farmhouses, farm buildings, cottages, fences, and other works where the replacement is necessary to maintain the existing rent; *and shall also include additions or improvements to*

(*v*) Paras. and words substituted and inserted, Finance Act, 1923, s. 28; with effect to 5th April, 1933, Act of 1928, s. 20.

farmhouses, farm buildings, or cottages, but only if no increased rent is payable in respect of the additions or improvements and in so far as they are made in order to comply with the provisions of any statute or the regulations or bye-laws of a local authority (*w*).

(3) *This rule shall apply to any land (inclusive of farmhouses and other buildings, if any) or house, the assessment on which is reduced for the purpose of collection:*

Provided that no repayment of tax shall be made under this rule in respect of the cost of maintenance, repairs, insurance or management, if or to such extent as that cost has been otherwise allowed as a deduction in computing income for the purposes of income tax (*x*).

(4) In comparing, for the purpose of this rule, the cost of maintenance, repairs, insurance, and management of any land or houses with the annual value of the land or houses, the total cost of the maintenance, repairs, insurance and management on any land managed as one estate, or of any houses on any such land, shall be compared with the total annual value of the land or houses, as the case may be.

(5) All the provisions of *the Income Tax Acts which relate to claims for any allowance or deduction* (*y*), or the proof to be given with respect to those claims, shall apply to claims for repayment under this rule and the proof to be given with respect to those claims:

Provided that if the owner of any land or house makes and delivers to the surveyor of any district in which the land or house is wholly or party situate a declaration as to the cost to him of maintenance, repairs, insurance, and management, and the surveyor is satisfied as to the correctness of the declaration, the amount of the allowance to which the owner is entitled under this rule shall be certified by the surveyor, and repayment shall thereupon be made in accordance with his certificate.

(6) In computing the five year average for the purposes of this rule, the year shall be taken to be the year ending on the thirty-first day of March, or such other date as may be adopted by the owner of the land or houses with the consent of the surveyor of the district, and the five preceding years shall be taken to be those preceding the commencement of the year for which the tax in respect of which a claim for repayment is made is charged.

9.—(1) Where land has been demised at a reserved rent, without fine or other sum paid or contracted for in lieu of a reserved rent, and loss has been sustained on the growing crops or stock on the lands, or the lands or any part of them have been rendered incapable of cultivation for any year, by reason of flood or tempest, the general commissioners for the division in which the lands are situate, on proof to them that the owner has, in consideration of any such loss, allowed, or agreed to allow,

(*w*) Words added, Act of 1924, s. 25.

(*x*) Paras. substituted with effect after the year 1922—23, Act of 1922, s. 25.

(*y*) Words substituted, Finance Act, 1920, s. 32, and Third Sched.

to the tenant an abatement of the whole or any part of the rent reserved or payable for any year of the term, may in like proportion make an abatement in the assessment under this Schedule for the year for which the abatement of rent has been made, and discharge therefrom the corresponding proportion of tax.

(2) Where any such loss is sustained on lands in the occupation of the owner, the commissioners may, on proof of the loss, make the like abatement and discharge of tax under this Schedule as might have been made if the land had been demised to a tenant, and the owner had made such abatement of rent proportionate to the loss sustained as the general commissioners consider would or ought to have been made in respect of such loss.

10. A person who—

(a) makes any false claim for an abatement under rule 9; or

(b) is guilty of any fraud or contrivance in making any such claim, or obtaining any such abatement; or

(c) fraudulently or untruly declares the amount of value of such loss, or the amount or value of any abatement made or agreed to be made in the rent of lands occupied by him on account of such loss, with the intention of fraudulently obtaining any such abatement,

shall forfeit the sum of fifty pounds and treble the amount of tax charged on him in respect of the lands.

11. A person who—

(a) aids, abets, or assists a person charged with tax in making any such false or fraudulent claim; or

(b) fraudulently or untruly declares the amount or value of any abatement made, or agreed to be made, in the rent of any lands, or the amount or value of any loss, with intent fraudulently to obtain for himself, his tenant, or for the owner or tenant of any lands any such abatement as aforesaid,

shall forfeit the sum of one hundred pounds.

No. VI.—Rules in respect of further Allowances.

1. The following further allowances shall be made under this Schedule:—

(a) The amount of the tax charged on any college or hall in any university of the United Kingdom, in respect of the public buildings and offices belonging to the college or hall, so far as not occupied by any individual member thereof or by any person paying rent for the same:

(b) The amount expended on repairs of the public buildings and offices of any such college or hall, and of the gardens, walks, and grounds for recreation, repaired and maintained by the funds of the college or hall:

(c) The amount of the tax charged on any hospital, public school, or almshouse, in respect of the public buildings, offices, and premises belonging thereto, and so far as not occupied by any individual officer or the master thereof whose total annual income, however arising, estimated in accordance with this Act, amounts to one hundred and fifty pounds or more, or by a person paying rent for the same:

(d) The amount expended on repairs of any such hospital, public school, or almshouse, and of the offices belonging thereto, and of the gardens, walks, and grounds used for the sustenance or recreation of the hospitallers, scholars and almsmen respectively, which are repaired and maintained by the funds of the hospital, public school or almshouse:

(e) The amount of the tax charged on any building being the property of any literary or scientific institution, and used solely for the purposes of that institution, in which no payment is made or demanded for any instruction there afforded by lectures or otherwise, and so far as not occupied by an officer of the institution or by any person paying rent for the same.

2. The allowances under the foregoing rule shall be granted by the general commissioners for the division.

No. VII.—Rules as to Persons chargeable.

1. Save as in this Act provided in any particular case, tax under this Schedule shall be charged on and paid by the occupier for the time being.

2. Every person having the use of any lands or tenements shall be deemed to be the occupier thereof.

3. The tax on each assessment shall be levied on the occupier for the time being, without any new assessment, notwithstanding any change of occupation:

Provided that—

(a) An occupier who quits occupation shall be liable for the tax payable in respect of the period up to the date of his quitting occupation, so far as such tax falls to be ultimately borne by him:

(b) Nothing in this Act shall extend to authorise the levying upon an occupier for the time being of any tax under this Schedule which ought to have been levied upon and ultimately borne by any former occupier of the lands, tenements or hereditaments, and nothing herein contained shall affect any remedy under this Act for the levying of any such tax or any portion thereof, from such former occupier.

4. Tax under this Schedule shall be charged on all lands, tenements and hereditaments, whether occupied at the time of assessment or not,

but if any house is or becomes unoccupied for the year or for part of the year of assessment, the tax shall not be levied thereon during the period while it is so unoccupied, and the general commissioners, on proof of the period during which the house was unoccupied, shall upon appeal discharge the tax in respect of that period.

5. If, after the making of an assessment, the lands are divided into two or more distinct occupations, the general commissioners, on the application of the persons respectively interested, shall determine what proportion of the tax shall be paid or borne by each occupier, and the amount apportioned shall be collected and levied in like manner as if it had been an original assessment.

*6. In respect of any compositions, rents, or other payments in lieu of tithes the commissioners may, if they think fit—

(a) charge the occupiers of the lands from which the tithes arise; or

(b) charge the respective persons liable to make any such payments; and

(c) direct notices to be delivered to any such persons respectively for the purpose of obtaining returns of any such payments, and the like provisions and penalties shall apply as in the case of statements to be delivered of the annual value of lands.

*7.—(1) Where lands, tenements, or hereditaments are subject to a rentcharge under the Tithe Act, 1836, or to any other rentcharge in lieu of tithe, and the owner of such rentcharge makes a return thereof for the purpose of an assessment being made upon him, the commissioners may, if they think fit, charge him under this Schedule in respect of the rentcharge, deducting therefrom the public local rates, taxes, and assessments charged thereon in the preceding year.

(2) Where any such charge is made upon the owner of the rentcharge, the amount of the rentcharge shall be allowed as a deduction from the annual value in assessing the lands, tenements, and hereditaments upon which it is charged.

8. The assessment and charge shall be made upon the landlord in respect of—

(a) any dwelling-house in the occupation of a tenant which, with the buildings or offices belonging thereto, and the land occupied therewith, is of less annual value than ten pounds; and

(b) any land and tenements which are let for a period less than one year; and

(c) any house or building let in different apartments or tenements, and occupied by two or more persons severally. Any such house or building shall be assessed and charged as one entire house or tenement:

Provided that in each of the above cases in default of payment by the landlord, the tax may be levied upon the occupier or occupiers respectively.

9.—(1) The landlord or immediate lessor of any lands, houses, or buildings may, if the general commissioners think fit, be assessed and charged as if he were the occupier thereof, for any year of assessment in which a request in writing to that effect is received from him and for subsequent years until he shall by notice in writing cancel such request.

(2) Any such request or notice shall be delivered personally or be sent by post to the clerk to the general commissioners on or before the thirty-first day of July in the year for which it is first to take effect.

(3) The tax so charged upon the landlord or immediate lessor may be recovered from him in the same manner as any other income tax is recoverable, but this provision shall not prejudice the right to recover the same, if necessary, by distraint upon the premises or property in respect of which the charge was made, in the same way as if the charge had been made upon the occupier for the time being.

10. Tax to be charged in respect of any house or tenement occupied by the accredited Minister of any foreign State shall be charged on and paid by the landlord or person immediately entitled to the rent of the house or tenement.

11. Tax to be charged in respect of any house, tenement, or apartment belonging to the Crown, in the occupation of any officer of the Crown, by right of his office or otherwise, except apartments in Royal palaces, shall be charged on and paid by the occupier on the annual value thereof.

12. Where a house is divided into distinct properties, and occupied by distinct owners or their respective tenants, such properties shall be separately assessed and charged on the respective occupiers thereof.

13.—(1) Any mortgagee or creditor in any heritable bond or wadset, in possession of the lands, tenements, hereditaments, or heritages mortgaged or secured, if in actual occupation of the same, shall be assessed and charged as an occupier, and if not in actual occupation, shall be liable to the like deduction as any landlord.

(2) In any settlement of accounts between such mortgagee or other creditor and the mortgagor or debtor, tax payable on interest due in respect of the mortgage or debt shall be allowed as money received on account of interest.

No. VIII.—Rules as to the right of persons by whom tax is paid to recoupment in certain cases.

1. A tenant occupier of any lands, tenements, hereditaments or heritages who pays the tax shall be entitled to deduct and retain in respect of the rent payable to the landlord for the time being (all sums allowed by the commissioners being first deducted), an amount representing the rate or rates of tax in force during the period through which the said rent was accruing due for every twenty shillings thereof, the said deduc-

tion to be made out of the first payment thereafter made on account of rent, and any receiver on behalf of the Crown or other person receiving the rent shall, *on production of the receipt for the payment of the tax* (*z*), allow the deduction on receipt of the residue of the rent:

Provided that in Scotland the said deduction from any rent due for the period ending on the fifteenth day of May shall be made at the rate of the tax in force at the commencement of that period:

Provided also that a tenant or occupier shall not be entitled to deduct out of the rent any greater sum than the amount of tax charged in respect of such property as aforesaid, and actually paid by him.

2. A tenant *to whom a deduction is to be allowed under the preceding rule* (*z*), shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid as rent.

3. An occupier of lands charged on the amount of any composition, rent, or payment for tithes arising therefrom who pays the tax shall on payment thereof be entitled to make the like deduction from any such composition, rent, or payment.

4.—(1) Where any lands, tenements, hereditaments, or heritages are subject to the payment of any annual sum, whether payable half-yearly or at any shorter or more distant period, a landlord, owner or proprietor who has been charged to tax under this Schedule or from whom tax is deductible under this rule or rule 1 or rule 3, shall be entitled on making such payment to deduct and retain thereout so much of the said tax as represents the rate or rates of income tax in force during the period through which the said payment was accruing due, for every twenty shillings thereof (the just proportion of any sums allowed by the commissioners being first deducted), and every receiver on behalf of the Crown, and every person to whom such payment is made shall, on receipt of the residue thereof, and without any charge for so doing, allow the deduction:

Provided that in Scotland the said deduction from any such payment due for the period ending on the fifteenth day of May shall be made at the rate of the tax in force at the commencement of that period:

Provided also that no such person as aforesaid who is also a tenant or the occupier of the lands, tenements, hereditaments, or heritages, shall be entitled to deduct out of any rent any greater sum than the amount of tax charged in respect of any such property and actually paid by him.

(2) In this rule "annual sum" means any yearly interest, annuity, rent, rentcharge (whether under the Tithe Act, 1836, or otherwise), fee farm rent, rent service, quit rent, feu duty, teind duty, stipend to a licensed curate, or other annual payment reserved or charged upon any lands, tenements, hereditaments, or heritages.

(*z*) Amendments made, Act of 1926, s. 26.

5. The landlord, owner or proprietor shall be acquitted and discharged of so much money as is represented by the deduction as if that sum had been actually paid.

6. Where under any Act passed before the twenty-eighth day of June, eighteen hundred and fifty-three, and in Ireland, under the Landed Property Improvement (Ireland) Act, 1847, or any Acts amending the same, an advance of public money to promote the improvement of lands has been made by way of loan, and the repayment thereof has been secured by a rentcharge upon the lands to be paid for a term of years, by which the principal sum advanced will eventually be repaid with interest, the person paying any such rent-charge may deduct and retain thereout so much of the tax under this Schedule charged in respect of the lands, as represents the tax on one-third, and no more, of the amount payable at the rate or rates of tax in force during the period through which the payment was accruing due; and the collectors and receivers of such rentcharges shall allow such deduction upon receipt of the residue of such rentcharge then due.

7. A tenant occupier for the time being of any lands, tenements or hereditaments, who has been required to pay, and has paid, any sums charged in respect thereof under this Schedule which, under the provisions of this Act, ought to have been or ought to be paid by a former tenant or occupier, may deduct and retain out of any subsequent payment of rent to his landlord, the sum, or any part thereof, which ought to have been or ought to be so paid.

8. Where under rule 8 of No. VII. tax has been charged upon a landlord in respect of any premises mentioned in paragraph (a) or (b) of that rule, and in default of payment by the landlord the tax has been levied upon the occupier, the tax may be deducted and shall be allowed out of the next payment on account of rent.

9. Where under rule 8 of No. VII. tax has been charged upon a landlord in respect of any premises mentioned in paragraph (c) of that rule, and in default of payment by the landlord the tax has been levied upon the occupier or occupiers, the tax may be deducted and shall be allowed out of the next or any subsequent payment on account of rent.

10. If for the purpose of avoiding distraint upon any premises or property under paragraph (3) of rule 9 of No. VII. the occupier pays the tax, the amount thereof may be deducted and shall be allowed out of the next or any subsequent payment on account of rent.

11. As between the owner and a mortgagee of his property or any person having a charge thereon or entitled to any ground rent, rent-charge, annuity, or other annual sum payable thereout, the owner's right of deduction under these rules in respect of tax shall not be affected by any relief afforded under rule 7 of No. V.

No. IX.—Rules as to Place of Charge.

1. All properties shall be assessed and charged in the parish where they are situate, and not elsewhere, except as otherwise provided in the following rules.

2. Profits arising from canals, inland navigations, streams of water, drains or levels, railways or other roads or ways of a public nature and belonging to or vested in any company of proprietors or trustees, corporate or not corporate, may be included in one statement and assessed and charged in the parish in which the general accounts of the concern are usually made up.

3. Profits of a manor or royalty which extends into different parishes may be included in one statement and assessed and charged in the parish where the court of the manor or royalty is usually held.

4. Profits of all fines received by the same person may be included in one statement and assessed and charged in the parish where that person resides, or, in the case of a body of persons, where that body has its head office.

*5. In the case of all lands the occupier, whether owner or tenant, or tenant under different owners, and whether the lands are situate in the same or in different parishes or divisions, shall return a statement in each parish in which any part of the lands is situate, and give a separate estimate of the lands in his occupation belonging to different owners, and if any such occupier wilfully omits to deliver any such statement in any parish, although he may not reside therein, he shall be charged for the lands omitted at treble the rate of tax in addition to any penalty for which he is liable.

*6. Lands held under the same demise, or occupied by the same person as owner, if they are wholly within the same division though situate in different parishes, may, if the commissioners are satisfied that the proportion in each parish, in respect of quantity, rent, or value, cannot be ascertained, be assessed and charged in either parish.

*7. In any such case if any lands extend into different divisions the assessment and charge shall be made in the division where the occupier resides.

8. Where a dwelling-house or any premises occupied therewith is situate in two or more parishes, the assessment and charge thereon shall be made in such one of those parishes only as the surveyor deems most expedient, and the surveyor shall notify to the commissioners acting for each of the said parishes the parish selected by him.

9. Where a mine is situate, or where its produce is manufactured, in a parish other than that in which the produce is sold, the profits of the mine shall be assessed and charged in the parish and division in which the mine is situate, or in which the produce is manufactured.

Schedule B.

Tax under Schedule B shall be charged in respect of the occupation of all lands, tenements, hereditaments, and heritages in the United Kingdom for every twenty shillings of the assessable value thereof estimated in accordance with the rules of this Schedule.

In this Act the expression "assessable value" means in relation to tax under this Schedule an amount equal to (*z*) the annual value of the lands, tenements, hereditaments, or heritages, or, in any case in which it is proved to the satisfaction of the commissioners concerned that any person occupying any lands and assessed to tax in respect thereof is not occupying those lands for the purpose of husbandry only, or mainly for those purposes, and the Board of Agriculture and Fisheries on a reference to the Board by the Commissioners of Inland Revenue do not certify that the use of the lands by the occupier thereof for a purpose other than the purpose of husbandry is unreasonable, an amount equal to *one-third of* (*a*) the annual value.

The expression "Board of Agriculture and Fisheries" means in the application of this Act to Scotland, the Board of Agriculture for Scotland, and in the application of this Act to Ireland, means the Department of Agriculture and Technical Instruction for Ireland.

Rules applicable to Schedule B.

Nothing in these rules shall affect the valuation of lands, tenements or hereditaments within the administrative county of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is by that Act made conclusive, for the purposes of income tax, and rule 2 and any other rule which relates to the ascertainment of the value of such lands, tenements and hereditaments shall not apply within the administrative county of London, except in the case of hereditaments which are not included in such valuation list, or hereditaments of which it is necessary to make a separate valuation by reason of their not being separately valued in any such valuation list.

Rules.

1. Tax under this Schedule shall be charged in addition to the tax to be charged under Schedule A on all the properties in this Act directed to be charged to the said tax according to the general rule of No. I. of Schedule A:

Provided that there shall not be charged under this Schedule—

(a) any dwelling-house, or the domestic offices thereunto belonging, unless occupied, by virtue of one and the same demise, together with a farm of lands, or with a farm of tithes, for the purpose of farming the same; or

(b) any warehouse or other building occupied for the purpose of carrying on a trade or profession.

(*z*) Word "twice" omitted, Finance Act, 1922, s. 23 (1).

(*a*) Words inserted, Finance Act, 1922, s. 23 (1).

2. The rules of No. IV. of Schedule A shall apply with respect to estimating the annual value of land under this Schedule, subject to the following modifications:—

(a) Where any tenant of land or tenements is subject to an agreement to pay or satisfy any rates, taxes, or assessments which are by law chargeable on or payable by the landlord, the amount thereof bonâ fide paid by the tenant in and for the year preceding the year of assessment, shall, in making the estimate, if the lands have been let within the seven preceding years be added to the rent reserved; if the lands or tenements were not let within the said period the estimate shall be made according to the general rule of No. I. of Schedule A, with the like addition of the amount of any such payment:

(b) In the case mentioned in rule 11 of the said No. IV., the annual value shall be taken to be the rackrent at which the land could have been let by the year at the commencement of the demise as ascertained in accordance with this Act.

3. Rules 9, 10, and 11 of No. V. of Schedule A, relating to relief in the case of losses caused by flood or tempest, shall apply in the case of this Schedule as in the case of Schedule A, and as respects land the proprietor of which is shown to the satisfaction of the general commissioners to be an infant, idiot, or lunatic, or to be otherwise incapable of consenting to an abatement of the rent, an abatement and discharge of tax under this Schedule may be allowed by the general commissioners on proof to them of the loss in respect of the abatement of rent which in their opinion ought to have been made.

4. Rules 1, 2, 3, 4, and 5 of No. VII. of Schedule A, relating to the person chargeable, shall apply in the case of this Schedule as they apply in the case of Schedule A.

5.—(1) Any person occupying lands for the purposes of husbandry only may elect to be assessed and charged under Schedule D, and in accordance with the provisions and rules applicable thereto, instead of under this Schedule.

(2) The election of any such person shall be signified by notice in writing delivered personally or sent by post in a registered letter to the surveyor for the district within two months after the commencement of the year of assessment; and from and after the receipt of the notice the charge upon him for that year shall be under Schedule D, and the profits or gains arising to him from the occupation of the lands shall for all purposes be deemed to be profits or gains of a trade chargeable under that Schedule.

6. If a person who occupies, either as owner or otherwise, any lands for the purposes of husbandry only, shows at the end of any year of assessment to the satisfaction of the general commissioners that the profits or gains arising from that occupation during that year fell short of the assessable value of the lands under this Schedule, the income arising from that occupation shall be taken at the actual amount of

those profits or gains, and if the whole of the tax has been paid, the amount overpaid shall be certified and repaid in like manner as tax is repaid under rule 6 of No. V. of Schedule A.

7. Any person occupying woodlands who proves to the satisfaction of the general commissioners or of the special commissioners that those woodlands are managed by him on a commercial basis and with a view to the realization of profits, may elect to be assessed and charged to tax in respect of those woodlands under Schedule D instead of under this Schedule in the same manner as a person occupying lands for the purposes of husbandry only, and rule 5 shall apply accordingly, subject as follows:—

(a) Any such election shall extend to all woodlands so managed on the same estate, but woodlands which are or have been planted or replanted since the nineteenth day of July nineteen hundred and sixteen shall be treated for this purpose as being woodlands on a separate estate, if the person occupying those woodlands gives notice to the general or special commissioners within *ten years* (*b*) after the time when they are so planted or replanted; and

(b) The election shall have effect, not only as respects the year of assessment, but also as respects all future years of assessment, so long as the woodlands are occupied by the person making the election:

(c) Any application to prove the aforesaid facts in any year in respect of the same woodlands must be made either to the general commissioners or to the special commissioners, and not to both.

8. The profits arising from lands occupied as nurseries or gardens for the sale of the produce (other than lands used for the growth of hops) shall be estimated according to the provisions and rules applicable to Schedule D, but shall be assessed and charged under this Schedule as profits arising from the occupation of lands.

Schedule C.

Tax under Schedule C shall be charged in respect of all profits arising from interest, annuities, dividends, and shares of annuities payable out of any public revenue, for every twenty shillings of the annual amount thereof.

Rules applicable to Schedule C.

General Rules.

1. Tax under this Schedule—

(a) shall extend to all profits arising from interest, public annuities, dividends and shares of annuities payable in the United Kingdom out of any public revenue in the United Kingdom or elsewhere, in any year of assessment; and

(*b*) Words substituted, Finance Act, 1922, s. 23 (2).

(b) shall be charged by the commissioners designated for that purpose by this Act; and

(c) shall be paid by the persons and bodies of persons respectively intrusted with payment, on behalf of the persons entitled thereto.

2. No tax shall be chargeable in respect of—

(a) The stock, dividends or interest transferred to accounts in the books of the Bank of England in the name of the Treasury or the National Debt Commissioners in pursuance of any Act of Parliament, but the Bank of England shall transmit to the special commissioners an account of the total amount thereof:

(b) The stock, dividends or interest belonging to the Crown in whatever name they may stand in the books of the Bank of England:

(c) The stock, dividends or interest of any accredited minister of any foreign State resident in the United Kingdom: Provided that if the same stand in the name of a trustee, the property therein of any such minister shall be proved by the trustee to the special commissioners:

(d) The interest or dividends on any securities of a foreign State or a British possession which are payable in the United Kingdom, where it is proved to the satisfaction of the Commissioners of Inland Revenue that the person owning the securities and entitled to the interest or dividends is not resident (*c*) in the United Kingdom; but, save as provided by this Act, no allowance shall be given or repayment be made in respect of the tax on the interest or dividends on the securities of any foreign State or any British possession which are payable in the United Kingdom:

Provided that where the securities of a foreign State or British possession are held under any trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call upon the trustees at any time to transfer the securities to him absolutely free from any trust, that person shall, for the purposes of this provision, be deemed to be the person owning the securities.

The aforesaid relief may be given by the Commissioners of Inland Revenue either by way of allowance or repayment on a claim being made to them for the purpose.

3. Any bank carrying on a bonâ fide banking business in the United Kingdom shall be relieved, by repayment or otherwise, from tax under this Schedule in respect of the interest on any securities which the bank proves to the satisfaction of the special commissioners to represent sub-

(*c*) As to appeal, see Act of 1924, s. 27.

scriptions by the bank to any Government loan issued for the purposes of the present war either before or after the passing of this Act, and the bank shall include the amount of any such interest in the computation of its profits or gains for the purpose of assessment under Case I. of Schedule D.

Rules as to interest, &c., payable out of public revenue to or through the Bank of England or the Bank of Ireland, or by the National Debt Commissioners.

1. The Bank of England and the Bank of Ireland as respects any interest, annuities, dividends and shares of annuities and the profits attached thereto payable to them out of the public revenue of the United Kingdom, or payable out of any public revenue and intrusted to them for payment and distribution, and the National Debt Commissioners as respects interest, annuities and dividends payable by them or of which they have the distribution, shall, when any payment becomes due, deliver to the commissioners appointed to assess and charge the tax thereon true accounts in books provided for the purpose, of—

(a) the amounts of the interest, annuities, dividends, or shares of annuities and profits attached thereto payable to the Bank;

(b) all interest, annuities, dividends and shares of annuities intrusted to the Bank or to the National Debt Commissioners for payment to the persons entitled thereto; and

(c) the amount of tax chargeable thereon at the rate in force at the time of payment without any other deduction than is allowed by this Act.

2. The aforesaid accounts shall distinguish the separate account of each person.

3. The appropriate commissioners shall assess the tax chargeable on the accounts delivered to the best of their judgment and belief, and deliver the assessment books, signed by them, to the special commissioners.

4. The special commissioners shall cause to be made out two certificates showing the total amount of tax, the total amounts of the interest, annuities, dividends, and shares of annuities and profits attached thereto charged with tax, and the description of the persons or bodies of persons to whom the same are payable, or who have the distribution or are intrusted with the payment thereof.

5. One certificate shall be transmitted to the respective commissioners whose duty it is to make the assessments and the other to the Commissioners of Inland Revenue.

6. The Bank of England and the Bank of Ireland shall set apart the tax in respect of the amounts payable to them, and the said Banks and the National Debt Commissioners respectively shall, before any payment is made by them, retain the amount of the tax for the purposes of this Act.

7. The retaining of the amount shall be deemed a payment of the tax by the persons entitled to the interest, annuities, dividends, or shares of annuities, and shall be allowed by them on receipt of the residue thereof, and the Bank of England, the Bank of Ireland, and the National Debt Commissioners respectively shall be acquitted and discharged of a sum equal to the amount retained as though that sum had been actually paid.

8. Money so set apart or retained and the amount of any tax charged on the trading profits of either Bank, shall be paid into the general account of the Commissioners of Inland Revenue at the Bank of England or the Bank of Ireland, and every such payment shall be accompanied with a certificate, under the hands of two or more of the commissioners who make the assessment, of the amount of the assessment under which the payment is made.

9. Except as otherwise provided in any other enactments in force at the commencement of this Act, no assessment, charge or deduction of tax under these rules shall be made where any half-yearly payment in respect of interest, annuities, dividends, or shares of annuities does not exceed fifty shillings, but such interest, annuities, dividends or shares of annuities shall be assessed and charged under Case III. of Schedule D.

10. No deduction of tax under these rules shall be made from any dividends in respect of which such certificate as is mentioned in section twenty-eight of the Charitable Trusts (Amendment) Act, 1855, has been given to the Bank of England.

Rules as to interest, &c., with the payment of which persons other than the Bank of England, the Bank of Ireland and the National Debt Commissioners are intrusted.

1. Every person (other than the National Debt Commissioners or the Bank of England or the Bank of Ireland) who is intrusted with the payment of any dividends which are payable *out of the public revenue of Northern Ireland, or which are payable* (*d*) to any persons in the United Kingdom, out of any public revenue other than that of the United Kingdom *or of Northern Ireland* (*d*) shall, within one month after being so required by notice published in the Gazette, deliver to the Commissioners of Inland Revenue an account in writing, giving his name and residence, and a description of the dividends intrusted to him for payment, and shall also, on demand by the inspector authorised for that purpose by the Commissioners of Inland Revenue, deliver to him, for the use of the special commissioners, true and perfect accounts of the amount of all such dividends.

2. The special commissioners shall have all necessary powers in relation to the examining, auditing, checking and clearing the books and accounts of dividends delivered under the authority of this Act, and

(*d*) Words inserted, Act of 1926, s. 24.

shall assess and charge the dividends at the rate of tax in force at the time of payment, but reduced by the amount of the exemptions (if any) allowed by them, and shall give notice of the amount so assessed and charged to the person intrusted with payment.

3. The person intrusted with payment shall out of the moneys in his hands pay the tax on the dividends on behalf of the persons entitled thereto, and shall be acquitted in respect of all such payments, and the provisions of this Act shall apply as in the case of dividends payable as aforesaid out of the public revenue of the United Kingdom.

4. The person intrusted with payment shall pay the tax into the general account of the Commissioners of Inland Revenue at the Bank of England or the Bank of Ireland, and in default of payment it shall be recovered from him in the same manner as other income tax assessed and charged upon him may be recovered.

5. A person intrusted with payment who does all such things as are necessary to enable the tax to be assessed and paid shall receive as remuneration an allowance, to be calculated by reference to the amount of the dividends paid from which tax has been deducted, and to be fixed by the Treasury at a rate not being less than thirteen shillings and sixpence for every thousand pounds of that amount:

Provided that this rule shall not apply to any person intrusted with the payment of dividends payable out of the public revenue of Northern Ireland (*d*).

6. A person intrusted with payment who neglects or refuses to deliver any such account as required by those rules shall forfeit the sum of one hundred pounds over and above the tax chargeable on any such dividends.

7. The following persons, that is to say:—

(a) Any person having the ordinary custody of any book, or making any list ordinarily kept in the United Kingdom, wherein the right or title of the person to whom the payment is to be made is shown by the registration or entry of his name;

(b) Any banker or person acting as a banker, who sells or otherwise realises coupons for any dividends (save such as are payable in the United Kingdom only), and pays over the proceeds to any person or carries the same to his account;

(c) Any person who by means of coupons received from any other person or otherwise on his behalf, obtains payment of any dividends elsewhere than in the United Kingdom;

(d) Any dealer in coupons who purchases coupons for any dividends (save such as are payable in the United Kingdom only) otherwise than from a banker or person acting as a banker, or another dealer in coupons,

shall be included as being persons intrusted with the payment of dividends within the meaning of these rules.

(*d*) Words inserted, Act of 1926, s. 24.

8. Nothing in these rules shall impose on any banker or other person acting as a banker the obligation to disclose any particulars relating to the affairs of any person on whose behalf he may be acting.

9. In these rules the expression "dividends" includes interest, annuities, dividends, and shares of annuities, and the expressions "coupons" and "coupons for any dividends," include warrants for or bills of exchange purporting to be drawn or made in payment of any dividends.

Rules as to interest, &c., payable out of public revenue by any public department.

1. Interest, annuities, dividends and shares of annuities payable out of any public revenue by any public office or department of the Crown shall be charged under this Schedule by the commissioners for offices in the said public office or department.

2. The said commissioners shall exercise the like powers and duties as are possessed by the commissioners empowered to charge interest, annuities, dividends, and shares of annuities payable out of the public revenue in other cases, and shall appoint assessors and collectors from the officers in their office or department entrusted with the payment thereof.

3. The said assessors and collectors shall, when any such payments are made as aforesaid, compute the tax thereon and certify the same to the proper officer for payment, who shall retain the tax and pay the same into the general account of the Commissioners of Inland Revenue at the Bank of England or the Bank of Ireland.

Schedule D.

1. Tax under this Schedule shall be charged in respect of—

(a) The annual profits or gains arising or accruing—

(i) to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere; and

(ii) to any person residing in the United Kingdom from any trade, profession, employment, or vocation, whether the same be respectively carried on in the United Kingdom or elsewhere; and

(iii) to any person, whether a British subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom, or from any trade, profession, employment, or vocation exercised within the United Kingdom; and

(b) All interest of money, annuities, and other annual profits or gains not charged under Schedule A, B, C or E, and not specially exempted from tax;

in each case for every twenty shillings of the annual amount of the profits or gains.

2. Tax under this Schedule shall be charged under the following cases respectively; that is to say,—

Case I.—Tax in respect of any trade not contained in any other Schedule;

Case II.—Tax in respect of any profession, employment, or vocation not contained in any other Schedule;

Case III.—Tax in respect of profits of an uncertain value and of other income described in the rules applicable to this Case;

Case IV.—Tax in respect of income arising from securities out of the United Kingdom, except such income as is charged under Schedule C;

Case V.—Tax in respect of income arising from possessions out of the United Kingdom;

Case VI.—Tax in respect of any annual profits or gains not falling under any of the foregoing Cases, and not charged by virtue of any other Schedule;

and subject to and in accordance with the rules applicable to the said Cases respectively.

Rules applicable to Schedule D.

Rule applicable to Case I.

The tax shall extend to every trade carried on in the United Kingdom or elsewhere, . . . (*b*), and shall be computed on the full amount of the balance of the profits or gains upon a fair and just average of three years ending on that day of the year immediately preceding the year of assessment on which the accounts of the said trade have been usually made up, or on the fifth day of April preceding the year of assessment.

Rule applicable to Case II.

The tax shall extend to every employment by retainer in any character whatever, whether such retainer shall be annual or for a longer or shorter period, and to all profits and earnings of whatever value arising from employments, and shall be computed on the full amount of the balance of the profits, gains and emoluments of the professions, employments or vocations upon a fair and just average of three years ending as in Case I.

Rules applicable to Cases I. and II.

1.—(1) The tax shall be charged without any other deduction than is by this Act allowed.

(2) Where the trade, profession, employment, or vocation has been set up and commenced within the *year preceding the year of assessment* (*c*), the computation shall be made on . . . (*c*) the profits or gains for one year from the period of the first setting up of the same,

(*b*) Words repealed, Act of 1926, s. 37 and 5th Sched. Part I.

(*c*) Words inserted and omitted, Act of 1926, s. 36 and 4th Sched.

and where it has been set up and commenced within the year of assessment, the computation shall be made according to the rules applicable to Case VI.

2.—(1) (*d*) Weekly wage-earners shall be assessed and charged to tax in respect of their wages in each quarter of the year instead of in the whole year, and shall in all cases be assessed and charged in respect of the actual amount of their wages for that quarter, and as respects any such assessment and charge and the collection of the tax the provisions of this Act shall have effect as if tax were charged for each quarter instead of for the year.

(2) This rule applies only to weekly wage-earners employed by way of manual labour in respect of the wages arising from that employment, and does not apply to persons employed as clerks, typists, draftsmen, or in any other similar capacity.

(3) If any question arises whether any person is a person to whom this rule applies, that question shall be determined jointly by the Commissioners of Inland Revenue and the general commissioners, and their determination shall be final and conclusive on the question.

3. In computing the amount of the profits or gains to be charged, no sum shall be deducted in respect of—

(a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession, employment, or vocation:

(b) any disbursements or expenses of maintenance of the parties, their families or establishments or any sums expended for any other domestic or private purposes distinct from the purposes of such trade, profession, employment or vocation:

(c) the rent or annual value of any dwelling-house or domestic offices or any part thereof, except such part thereof as is used for the purposes of the trade or profession: Provided that where any such part is so used, the sum so deducted shall be such as may be determined by the commissioners, and shall not, *unless in any particular case the commissioners are of opinion that, having regard to all the circumstances, some greater sum ought to be deducted, exceed two-thirds* (*e*) of the annual value or of the rent bonâ fide paid for the said dwelling-house or offices:

(d) any sum expended for repairs of premises occupied, or for the supply, repairs, or alterations of any implements, utensils, or articles employed for the purposes of the trade, profession, employment or vocation, beyond the sum *actually* (*f*) expended for those purposes . . . . (*f*):

(*d*) This Rule is now deemed to be one of the Rules applicable to Sched. E, Finance Act, 1922, s. 18 (2).

(*e*) Words substituted, Finance Act, 1921, s. 31.

(*f*) Word substituted and words omitted, Act of 1926, s. 36 and 4th Sched.

(e) any loss not connected with or arising out of the trade, profession, employment or vocation:

(f) any capital withdrawn from, or any sum employed or intended to be employed as capital in such trade, profession, employment or vocation:

(g) any capital employed in improvements of premises occupied for the purposes of the trade, profession, employment or vocation:

(h) any interest which might have been made if any such sums as aforesaid had been laid out at interest:

(i) any debts, except bad debts proved to be such to the satisfaction of the commissioners and doubtful debts to the extent that they are respectively estimated to be bad. In the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof:

(j) any average loss beyond the actual amount of loss after adjustment:

(k) any sum recoverable under an insurance or contract of indemnity:

(l) any annual interest, or any annuity, or other annual payment payable out of the profits or gains:

(m) any royalty or other sum paid in respect of the user of a patent.

4.—(1) Where any person has paid excess profits duty (*f*), the amount so paid shall be allowed as a deduction in computing the profits or gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid; but where any person has received payment of any amount previously paid by him by way of excess profits duty, the amount repaid shall be treated as profit for the year in which the repayment is received:

Provided that any excess profits duty which becomes chargeable by virtue only of the provisions of the Finance Act, 1918, relating to profits arising from the sale of trading stock otherwise than in the ordinary course of trade, shall not be deemed to be excess profits duty for the purposes of this rule.

(2) The payment of excess profits duty (*f*) shall not be deemed to be a specific cause for the purpose of rule 3 of the miscellaneous rules applicable to this Schedule.

(3) Where in any year of assessment the profits or gains from which a deduction may be made under this rule come into computation, but owing to the time at which the amount of the excess profits duty (*f*) became ascertained it was impracticable to give effect to the deduction when assessing income tax, the amount by which that tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty or, if there is no excess profits duty, shall be repaid to the taxpayer.

(4) This rule shall apply to sums actually paid in respect of munitions Exchequer payments as it applies to excess profits duty, except that

(*f*) Paras. (1), (2), (3) applied with reference to corporation profits tax, Finance Act, 1920, s. 31.

the relief to the taxpayer under the last preceding paragraph of this rule shall in all cases be given by means of repayment and not by deduction.

(5) Any excess profits duty and any munitions Exchequer payments which under the provisions contained in section forty-eight of the Finance Act, 1916 (which provides for the adjustments of excess profits duty and munitions Exchequer payments in the case of controlled establishments), are remitted for the purpose of collection, shall not be deemed to have been paid for the purposes of this rule.

(6) The expression "munitions Exchequer payments" means any sums paid or payable into the Exchequer under section four of the Munitions of War Act, 1915, on account of the excess of the net profits of a controlled establishment.

5.—(1) The computation of tax shall be made exclusive of the *annual value of* (*h*) lands, tenements, hereditaments, or heritages occupied for the purpose of the trade or profession, *and separately assessed and charged under Schedule A.* (*h*):

. . . . (*h*) where any lands, tenements, hereditaments, or other premises of whatsoever description used for the purpose of any trade, profession, employment, or vocation, are situate outside the United Kingdom, no deduction or set-off shall, in estimating the amount of annual profits or gains arising or accruing from that trade, profession, employment, or vocation, in any manner be allowed on account or in respect of the annual value of those premises.

(2) Where, in estimating the amount of annual profits or gains arising or accruing from any trade, profession, employment, or vocation and chargeable to tax under this Schedule, any sum is deducted on account of the annual value of the *lands, tenements, hereditaments and heritages* (*h*) used for the purpose of such trade, profession, employment, or vocation, the sum so deducted shall not exceed the amount of the assessment of the *lands, tenements, hereditaments and heritages* (*h*) for the purpose of tax under Schedule A as reduced for the purpose of collection:

Provided that this provision shall not apply in the case of any premises being mills, factories or other similar premises (*i*).

6.—(1) In charging the profits or gains of a trade under this Schedule, such deduction may be allowed as the commissioners having jurisdiction in the matter may consider just and reasonable, as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the trade and belonging to the person by whom it is carried on.

(2) Where machinery or plant is let to the person by whom the trade is carried on, on the terms of his being bound to maintain the same and deliver it over in good condition at the end of the lease, the machinery

(*h*) Words substituted, inserted and omitted, Act of 1926, s. 36 and 4th Sched.
(*i*) But see now Finance Act, 1919, s. 18 (1).

or plant shall be deemed to belong to that person for the purpose of this rule.

(3) Where full effect cannot be given to any such deduction in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year, and deemed to be part of that deduction, or, if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years.

(4) Any claim in respect of the aforesaid deduction shall be included in the annual statement required to be delivered under this Act of the profits or gains of the trade for which the machinery or plant is used, and the additional commissioners, in assessing those profits or gains, shall make such allowance in respect thereof as they think just and reasonable.

(5) Where machinery or plant is let upon such terms that the burden of maintaining and restoring it falls upon the lessor, he shall be entitled, on presenting a claim to the general or special commissioners, to have repaid to him such a portion of the sum assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as shall represent the tax upon an amount which the commissioners consider just and reasonable as representing the diminished value by reason of wear and tear of the machinery or plant during the year.

No such claim shall be allowed unless made within twelve months after the expiration of the year of assessment.

(6) No deduction for wear and tear, or repayment on account of any such deduction, shall be allowed for any year if the deduction, when added to the deductions allowed on that account for any previous years to the person by whom the trade is carried on, will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or re-instatement.

(7) Where an application is made to the Commissioners of Inland Revenue for the alteration of the amount of any deduction for wear and tear, the Commissioners, unless they are of opinion that the application is frivolous or vexatious, shall refer the case to the Board of Referees, and that Board shall, if they are satisfied that the application is made by or on behalf of any considerable number of persons engaged in any class of trade or business, take the application into their consideration, and determine the deduction to be allowed.

In this rule the expression "Board of Referees" means any Board of Referees appointed for the purpose of Part III. of the Finance (No. 2) Act, 1915, or, if there is no such Board, a Board of Referees to be appointed for the purpose of this rule by the Treasury.

7. In estimating the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade chargeable under this Schedule there shall be allowed to be deducted as expenses incurred in any year so much of any amount expended in that year in replacing any plant or machinery which has become obsolete as is equivalent to the cost of the plant or machinery replaced after deducting from that cost the total amount of any allowances which have at any time been made in estimating profits or gains as aforesaid on account of the wear and tear of that plant and machinery, and any sum realised by the sale of that machinery or plant.

8. . . . . (*j*).

9.—(1) If a person charged under this Schedule ceases within the year of assessment to carry on the trade, profession, or vocation in respect of which the assessment is made, and is succeeded therein by another person, the surveyor shall, within four months from the fifth day of April next after any such change, certify to the general commissioners for the division in which the assessment is made the particulars thereof, and the full name and residence of the person charged and of his successor and the date of the change, if the same be known to the surveyor.

(2) On receipt of the certificate the commissioners shall cause notice to be given to the respective persons of a meeting of the commissioners to consider it, and after examination of the said persons, if they attend, or on other satisfactory proof of the facts, the commissioners shall adjust the assessment by charging the successor with a fair proportion thereof from the time of his succeeding to the trade, profession, or vocation, and relieving the person originally charged from a like amount.

(3) The determination of the commissioners on any such certificate shall be final, and the sum apportioned to each such person shall be recoverable from him in like manner as if he had been charged under the original assessment.

(4) If either of the said persons has paid in respect of an assessment so certified more than the proportion which appears by the determination of the commissioners to be chargeable on him, the amount overpaid shall, when recovered from the person liable, be paid to the person by whom the overpayment was made.

10.—(1) Where a trade or profession is carried on by two or more persons jointly, the tax in respect thereof shall be computed and stated jointly and in one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name.

(2) The precedent partner, that is to say, the partner who, being resident in the United Kingdom—

(i) is first named in the agreement of partnership; or

(ii) if there be no agreement, is named singly or with precedence to the other partners in the usual name of the firm; or

(*j*) Repealed, Act of 1926, s. 37 and ~~4th~~ 5th Sched. Part I.

(iii) is the precedent acting partner, if the person named with precedence is not an acting partner;

shall make and deliver a statement of the profits or gains of such trade or profession, on behalf of himself and the other partners, and declare therein the names and residences of the other partners, under the penalty prescribed by this Act for default in delivering a statement.

(3) Where no partner is resident in the United Kingdom the statement shall be made and delivered by the agent, manager, or factor of the firm resident in the United Kingdom.

(4) Any other partner may, if a statement has been delivered as aforesaid, notify the fact that he is a partner together with his name and place of abode, without returning the amount of tax payable in respect of the partnership, but the respective commissioners may, if they think fit, require from every partner a like statement and the like information and evidence, as they are entitled to require from the precedent partner.

11 (*k*).—(1) If at any time after the fifth day of April, nineteen hundred and twenty-eight, a change occurs in a partnership of persons engaged in any trade, profession or vocation, by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or vocation continue to be engaged therein, or a person who until that time was engaged in any trade, profession or vocation on his own account continues to be engaged in it, but as a partner in a partnership, the tax payable by the person or persons who carry on the trade, profession or vocation after that time shall, notwithstanding the change, be computed according to the profits or gains of the trade, profession or vocation during the period prescribed by the Income Tax Acts:

Provided that, where all the persons who were engaged in the trade, profession or vocation both immediately before and immediately after the change require, by notice signed by all of them, or, in the case of a deceased person, by his legal representatives, and sent to the surveyor within three months after the change took place, that the tax payable for all years of assessment shall be computed as if the trade, profession or vocation had been discontinued at the date of the change, and a new trade, profession or vocation had been then set up or commenced, and that the tax so computed for any year shall be charged on and paid by such of them as would have been charged if such discontinuance and setting up or commencement had actually taken place, the tax shall be computed, charged, collected and paid accordingly.

(2) If at any time after the said fifth day of April any person succeeds to any trade, profession or vocation which until that time was carried on by another person and the case is not one to which paragraph (1) of this Rule applies, the tax payable for all years of assessment by the person

(*k*) New rule substituted, Act of 1926, s. 32 (1).

succeeding as aforesaid shall be computed as if he had set up or commenced the trade, profession or vocation at that time, and the tax payable for all years of assessment by the person who until that time carried on the trade, profession or vocation shall be computed as if it had then been discontinued.

In this paragraph references to a person include references to a partnership.

(3) In the case of the death of a person who, if he had not died, would, under the provisions of this Rule, have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.

12.—(1) Where any trade or business is carried on by two or more persons in partnership, and the control and management of such trade or business is situate abroad, the trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the said partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the said partnership are resident in the United Kingdom and that some of the trading operations of the said partnership are conducted within the United Kingdom.

(2) Where any part of the trade or business of a partnership firm whose management and control is situate abroad consists of trading operations within the United Kingdom, the said firm shall be chargeable in respect of the profits of such trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is chargeable in respect of trading operations by him within the United Kingdom, notwithstanding the fact that one or more of the members of the said firm are resident in the United Kingdom:

Provided that for the purpose of charging any such firm in respect of the profits of the said trading operations within the United Kingdom, an assessment may be made on the said firm in respect of the said profits in the name of any partner resident in the United Kingdom.

13. A person who carries on, either solely or in partnership, two or more distinct trades the profits of which are chargeable under the rules of this Schedule, may deduct from or set off against the profits as computed under this Act in respect of one or more such trades, the loss so computed sustained in any other such trade, and may make separate statements as to each such trade.

14. Any bank which has obtained relief from tax under Schedule C by reason of the provisions of rule 3 of the general rules applicable to Schedule C in respect of the interest on any securities representing subscriptions of the bank to a war loan shall include the amount of any such interest in the computation of its profits or gains for the purpose of assessment under Case I. of this Schedule.

15.—(1) Where an assurance company carries on life assurance business in conjunction with assurance business of any other class, the life assurance business of the company shall for the purposes of this Act

be treated as a separate business from any other class of business carried on by the company.

(2) In ascertaining whether an assurance company has sustained a loss in respect of its life assurance business for the purpose of setting off such loss against the profits of any other business carried on by the company, or for the purpose of obtaining an adjustment of its liability by reference to the loss and to the aggregate amount of its income under the provisions contained in this Act, any income of the company derived from the investments of its life assurance fund shall be treated as part of the profits of the company acquired in that business.

16. Every statement of profits to be charged under this Schedule which is made by any person—

(i) on his own account; or

(ii) on account of some other person for whom he is chargeable, or who is chargeable in his name,

shall include every source of income so chargeable, and a person shall be chargeable in respect of the whole of the tax so chargeable in one and the same division and by the same commissioners:

Provided that where the same person is engaged in different partnerships or in different trades in different places, a separate assessment and charge shall be made in respect of each concern at the place where, if singly carried on, it would be assessed and charged under the provisions of this Act.

17. Where a person delivers a statement of profits as aforesaid on behalf of some other person, or of a body of persons the statement shall be delivered in the division where the person delivering the statement or the body of persons respectively would be assessable and chargeable if acting on his or their own behalf.

Rules applicable to Case III.

1. The tax shall extend to—

(a) any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods;

(b) all discounts;

(c) profits on securities bearing interest payable out of the public revenue other than such as are charged under Schedule C;

(d) interest, annuities, dividends and shares of annuities payable out of any public revenue where the half-yearly payments in respect thereof do not exceed fifty shillings and are not chargeable under Schedule C;

(e) interest paid or credited in full without deduction of tax by any savings bank to any depositor;

(f) interest on any Exchequer bonds issued under the authority of the Treasury during the continuance of the present war and a period of six months thereafter and on any securities issued under the War Loan Acts, 1914 to 1917, or any Act amending those Acts, in cases where such interest is paid without deduction of tax.

2.—(1) *The tax shall, subject as hereinafter provided, be computed—*

(a) *as respects the year of assessment in which the profits or income first arise, on the full amount of the profits or income arising within that year; and*

(b) *as respects subsequent years of assessment, on the full amount of the profits or income arising within the year preceding the year of assessment:*

Provided that—

(i) *where the profits or income first arose on some day in the year preceding the year of assessment other than the sixth day of April, the computation shall be made on the profits or income of the year of assessment; and*

(ii) *where the profits or income first arose on the sixth day of April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than the sixth day of April, the person charged shall be entitled, on giving notice in writing to the surveyor of taxes at any time within twelve months after the end of the year of assessment, to be charged on the amount of the profits or income of that year, and if the tax charged has been paid, any amount overpaid shall be repaid.*

(2) *Tax shall be paid on the actual amount computed as aforesaid without any deduction* (*h*).

3.—(1) Where an assurance company not having its head office in the United Kingdom carries on life assurance business through any branch or agency in the United Kingdom, any income of the company from the investments of its life assurance fund (excluding the annuity fund, if any), wherever received, shall, to the extent provided in this rule, be deemed to be profits comprised in this Schedule and shall be charged under this Case.

(2) Such portion only of the income from the investments of the life assurance fund for the year preceding the year of assessment shall be so charged as bears the same proportion to the total income from those investments as the amount of premiums received in that year from policy holders resident in the United Kingdom and from policy holders resident abroad whose proposals were made to the company at or through

(*h*) Rule substituted, Finance Act, 1922, s. 17.

its office or agency in the United Kingdom bears to the total amount of the premiums received by the company:

Provided that in the case of an assurance company having its head office in any British possession, the Commissioners of Inland Revenue may, by regulation, substitute some basis other than that herein prescribed for the purpose of ascertaining the portion of the income from investments to be so charged as being income derived from business carried on in the United Kingdom.

(3) Every such charge shall be made by the special commissioners as though the company under the provisions of this Act had required the proceedings relating to the charge to be had and taken before those commissioners.

(4) Where a company has already been charged to tax, by deduction or otherwise, in respect of its life assurance business, to an amount equal to or exceeding the charge under this rule, no further charge shall be made under this rule, and where a company has already been so charged, but to a less amount, the charge shall be proportionately reduced.

4. If the commissioners find that lands which have been charged under Schedule B on the assessable value, and which are occupied by a dealer in cattle or a dealer in or a seller of milk, are insufficient for the keep of the cattle brought on to the lands, so that the assessable value affords no just estimate of the profits, they may require a statement of the profits to be delivered, and charge such further sum thereon as, together with the charge under Schedule B, will make up the full sum wherewith the dealer or seller ought to be charged in respect of the like amount of profits charged according to rule 2 of the rules applicable to this Case.

Rules applicable to Case IV.

1. The tax in respect of income arising from securities in any place out of the United Kingdom shall be computed on the full amount thereof arising in the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom, to the same deductions and allowances as if it had been so received, and to the deduction, where such a deduction cannot be made under any other provision of this Act, of any sum which has been paid in respect of income tax in the place where the income has arisen, and to a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom, and the provisions of this Act (including those relating to the delivery of statements) shall apply accordingly.

2. The foregoing rule shall not apply—

(a) to any person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom; or

(b) to income arising from such securities as aforesaid which form part of the investments of the foreign life assurance fund of an assurance company.

The tax in any such case shall be computed on the full amount, so far as the same can be computed, of the sums which have been, or will be, received in the United Kingdom in the year of assessment without any deduction or abatement.

3 (*i*). . . . .

Rules applicable to Case V.

1. The tax in respect of income arising from stocks, shares or rents in any place out of the United Kingdom shall be computed on the full amount thereof on an average of the three preceding years, as directed in Case I., whether the income has been or will be received in the United Kingdom or not, subject, in the case of income not received in the United Kingdom, to the same deductions and allowances as are provided in rule 1 of the rules applicable to Case IV., and the provisions of this Act, including those relating to the delivery of statements, shall apply accordingly.

2. The tax in respect of income arising from possessions out of the United Kingdom, other than stocks, shares or rents, shall be computed on the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value so received on credit or on account in respect of any such remittances, property, money, or value brought or to be brought into the United Kingdom, on an average of the three preceding years as directed in Case I., without any deduction or abatement other than is therein allowed.

3. Rule 1 of the foregoing rules shall not apply—

(a) to a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom; or

(b) to the income therein described arising from the investments of the foreign life assurance fund of an assurance company;

and in such cases the computation shall be made in accordance with rule 2.

4 (*j*). *Where a person who has been charged with tax in respect of income from a possession out of the United Kingdom proves that the total amount of tax, computed in accordance with rule* 1 *of the rules applicable to Cases I. and II. of Schedule D, which was paid in respect of that income for the first three complete years of assessment during which he was the owner of the possession, exceeds the total amount*

(*i*) Rule 3 repealed, Act of 1924, s. 41 (4), and 3rd Sched.; as to appeal, see Act of 1924, s. 27.

(*j*) Old rule 4 repealed, Act of 1924, s. 41 (4), and 3rd Sched.; as to appeal, see Act of 1924, s. 27.

which would have been paid if he had been assessed for each of those years on the actual amount of the income of each year, he shall be entitled to repayment of the excess.

An application for repayment under this rule shall be made within twelve months after the end of the three years aforesaid and shall be determined by the commissioners by whom the assessment for the last of the said three years was made (*k*).

Rules applicable to Case VI.

1. The nature of the profits or gains, and the basis on which the amount thereof has been computed, including the average, if any, taken thereon, shall be stated to the commissioners.

2. The computation shall be made, either on the full amount of the profits or gains arising in the year of assessment, or according to an average of such a period, [*not being greater*] (*l*) than one year, as the case may require, and as may be directed by the commissioners.

3. Every such statement and computation shall be made to the best of the knowledge and belief of the person in receipt of or entitled to the profits or gains.

Miscellaneous Rules applicable to Schedule D.

1. Tax under this Schedule shall be charged on and paid by the persons or bodies of persons receiving or entitled to the income in respect of which tax under this Schedule is hereinbefore directed to be charged.

2. A person shall not be charged to tax under this Schedule as a person residing in the United Kingdom, in respect of profits or gains received in respect of possessions or securities out of the United Kingdom, who is in the United Kingdom for some temporary purpose only, and not with any view or intent of establishing his residence therein, and who has not actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment, but if any such person resides in the United Kingdom for the aforesaid period he shall be so chargeable for that year.

3 (*m*). . . . .

4.—(1) A person engaged in a trade, profession, employment, or vocation shall be assessable and chargeable in the parish—

(a) where the trade, profession, employment, or vocation is carried on, whether carried on wholly or in part only within the United Kingdom, and whether he is engaged in one or more of such concerns; or

(b) where he ordinarily resides,

except that a person engaged in a trade within the United Kingdom

(*k*) Added, Act of 1924, s. 26. (*l*) Amended, Act of 1926, s. 29 (2), *infra*.
(*m*) Repealed, Act of 1926, s. 37 and 5th Sched. Part I.

carried on by the manufacture of goods, wares, or merchandise shall be assessable and chargeable—

(a) at the place of manufacture, although the sales thereof be elsewhere; or

(b) where he ordinarily resides.

(2) A person who is a householder and not engaged in a trade, profession, employment, or vocation shall be assessable and chargeable in the parish in which his dwelling-house is situate, or where he ordinarily resides.

(3) A person not engaged in a trade, profession, employment, or vocation, who has two or more places of ordinary residence, shall be assessable and chargeable at either such place.

(4) A person who is neither a householder, nor engaged in a trade, profession, employment, or vocation, who has a place of ordinary residence, shall be assessable and chargeable in the parish in which he ordinarily resides.

(5) Every other person not hereinbefore described shall be assessable and chargeable in the parish where he resides at the time of the issue of the general notices under this Act, or where he first comes to reside after the time of the issue of those general notices.

(6) Every assessment and charge made in pursuance of the above provisions shall be valid and effectual, notwithstanding the subsequent removal of the person from the parish in which he is assessed or charged.

(7) For the purpose of ascertaining the proper parish of assessment and charge, every person who delivers a list or statement under this Act shall deliver at the same time a signed declaration stating—

(a) where he is assessable and chargeable; and

(b) whether he is or is not engaged in a trade, profession, employment, or vocation, and, if so, the place within the United Kingdom where it is carried on, and particulars of every trade, profession, employment, or vocation in which he shall be engaged in such place, whether it be carried on wholly or partly within the United Kingdom.

5. The commissioners may require a person who has two residences, or who carries on or exercises a trade or profession in different parishes, or in a parish other than the parish of his ordinary residence, to deliver in each such parish the like lists, declarations, and statements as he is required to deliver in the parish where he ought to be assessed and charged, but no such person shall by reason thereof be liable to any double charge.

6. Where any creditor on any rates or assessments not chargeable as profits is entitled to any interest of money, the proper officer having the management of the accounts may be charged with the tax payable thereon, and shall be answerable for all matters necessary to enable the tax to be duly charged and for payment thereof, as if the rates or assessments were profits chargeable to tax, and shall be, in like manner,

indemnified in respect of all such matters as if the said rates or assessments were chargeable.

7.—(1) Where—

(a) any interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, shares, or securities of any foreign or colonial company, society, adventure, or concern; or

(b) any annuities, pensions, or other annual sums payable out of the funds of any institution in India,

are intrusted to any person in the United Kingdom for payment to any persons in the United Kingdom, the same shall be assessed and charged to tax under this Schedule by the special commissioners (*n*).

(2) All the provisions of Schedule C relating to the tax to be assessed and charged in respect of dividends payable out of any public revenue other than that of the United Kingdom, and intrusted to any person (other than the National Debt Commissioners or the Bank of England or the Bank of Ireland) for payment to any persons in the United Kingdom, shall extend to the tax to be assessed and charged under this rule (*n*).

(3) Any person who, if acting in relation to dividends chargeable under the aforesaid provisions of Schedule C would be deemed to be a person intrusted with the payment of such dividends, shall, if acting in relation to sums chargeable under this rule, be deemed to be a person intrusted with the payment thereof.

Schedule E.

Tax under Schedule E shall be charged in respect of every public office or employment of profit, and in respect of every annuity, pension, or stipend payable by the Crown or out of the public revenue of the United Kingdom, other than annuities charged under Schedule C, for every twenty shillings of the annual amount thereof (*o*).

Rules applicable to Schedule E.

1. Tax under this Schedule shall be annually charged on every person having or exercising an office or employment of profit mentioned in this Schedule, or to whom any annuity, pension, or stipend, as described in this Schedule, is payable, in respect of all salaries, fees, wages, perquisites or profits whatsoever therefrom *for the year of assessment* (*p*),

(*n*) As to appeal, see Act of 1924, s. 27.

(*o*) Operation of Sched. E extended, Finance Act, 1922, s. 18 (1).

(*p*) The words in *italics* apply now only to the cases indicated in paras. (a), (b), (c) of the proviso to sect. 45 (1) of the Act of 1927; for other purposes, words are substituted by sect. 45 (1), which see, *infra*.

. . . . . (*q*), after deducting the amount of duties or other sums payable or chargeable on the same by virtue of any Act of Parliament, where the same have been really and bonâ fide paid and borne by the party to be charged.

2. Every assessment shall be made for one year, and the tax in respect thereof shall be levied for that year without any new assessment notwithstanding any change in the holder of any office or employment; but if, during the year of assessment, any person chargeable quits the office or employment, or dies, he, or his executors or administrators, respectively, shall be liable for tax in respect of the period during which he held or exercised the office or employment, and any successor shall in like manner be liable in respect of the period during which he has held or exercised the same (*r*).

3. If an annuity, pension, or stipend ceases within the year of assessment, the assessment thereon shall be discharged as from the date of cessation (*r*).

. . . . . (*q*).

5. If at any time, either during the year of assessment or in respect of that year, a person becomes entitled to any additional salary, fees, or emoluments beyond the amount for which an assessment has been made upon him, or for which at the commencement of that year he was liable to be charged, an additional assessment shall, as often as the case may require, be made upon him in respect of any such additional salary, fees or emoluments, so that he may be charged in respect of the full amount of his salary, fees or emoluments for that year.

If any person proves to the satisfaction of the commissioners concerned that the amount for which an assessment has been made in respect of his salary, fees or emoluments for any year of assessment exceeds the amount of the salary, fees or emoluments for that year, the assessment shall be adjusted and any amount overpaid by way of tax shall be repaid (*s*).

6. The tax shall be paid in respect of all the public offices and employments of profit within the United Kingdom or by the officers hereinafter respectively described, namely—

(a) offices belonging to either House of Parliament;

(b) offices belonging to any court of justice in the United Kingdom, whether civil, criminal, ecclesiastical, naval, military, or air-force;

(c) public offices under the civil government of the Crown, or in any county palatine, or the Duchy of Cornwall;

(d) officers in His Majesty's navy;

(e) commissioned officers in His Majesty's military forces;

(f) commissioned officers in His Majesty's air force;

(*q*) Words in rule 1 and rule 4 repealed, Finance Act, 1922, 3rd Sched. Part I.

(*r*) See Act of 1927, s. 45 (9).

(*s*) Para. inserted, Act of 1922, s. 18 (5); and see Act of 1927, s. 45 (9).

(g) offices or employments of profit under any ecclesiastical body;

(h) offices or employments of profit under any company or society, whether corporate or not corporate;

(i) offices or employments of profit under any public institution, or on any public foundation of whatever nature, or for whatever purpose established;

(j) offices or employments of profit under any public corporation or local authority, or under any trustees or guardians of any public funds, tolls, or duties;

(k) all other public offices, or employments of profit which are of a public nature.

7.—(1) Tax in respect of offices and employments of profit held under a railway company shall be charged by the special commissioners, who shall notify to the secretary or other officer of the company the particulars of the assessments.

(2) Any such assessment shall be deemed to be and shall be an assessment upon the company, and the tax in respect thereof shall be paid, collected, and levied accordingly, and the company or the secretary or other officer may deduct out of the emoluments of the holder of any such office or employment of profit the tax so charged.

8. In estimating the tax payable, all official deductions and payments made on receipt of the emoluments of any office or employment of profit, or on receipt of any annuity, pension, or stipend, or on passing the accounts of the office, may be deducted if a due account thereof is rendered to the commissioners and proved to their satisfaction.

9. If the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money wholly, exclusively, and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

10. Where the Treasury are satisfied with respect to any class of persons in receipt of any salary, fees, or emoluments payable out of the public revenue that such persons are obliged to lay out and expend money, wholly, exclusively, and necessarily in the performance of the duties in respect of which such salary, fees, or emoluments are payable, the Treasury may fix such sum, as in their opinion represents a fair equivalent of the average annual amount laid out and expended as aforesaid by persons of that class, and in charging the tax on the said salary, fees, or emoluments, there shall be deducted from the amount thereof the sum so fixed by the Treasury:

Provided that if any person would, but for the provisions of this rule, be entitled to deduct a larger amount than the sum so fixed, that sum may be deducted instead of the sum so fixed.

11.—(1) Where any official pay is payable at a public office, or by any officer of the Royal household, or by a Crown receiver or paymaster, or by any agent employed in that behalf, the tax chargeable thereon shall be deducted out of the official pay, or out of any money which is payable on account of that official pay or any arrears thereof, and shall be applied in satisfaction of any such tax which has not been otherwise paid, and shall be paid to the Commissioners of Inland Revenue.

(2) If the tax payable is charged by the general commissioners in their respective divisions, they shall transmit an account of the amount of tax so charged to the office where the official pay is payable, in order that it may be there deducted.

(3) In this rule the expression "official pay" means any salary, fees, wages, perquisites, or other profits, or any annuity, pension, or stipend.

(4) Where an annuity or pension is payable out of any particular branch of the public revenue at the office of that branch, the commissioners acting for that department may charge the tax in respect of the same as if the annuity or pension were salary or wages payable thereout.

12. Where any emoluments chargeable under this Schedule do not arise as described in the last preceding rule, but arise from any other office or employment of profit, and are payable by any officer, receiver, or agent, any tax chargeable in respect thereof which has not been otherwise paid shall be deducted therefrom or from the arrears thereof and paid to the proper officer.

13.—(1) If either—

(i) the tax in respect of any office or employment of profit cannot be deducted in the hands of the appropriate officer or of an agent for payment of the emoluments thereof; or

(ii) the said emoluments have been paid over to the person entitled to them;

and the person charged neglects or refuses to pay the tax, the commissioners for the offices concerned may, by writing under their hands and seals, certify the neglect or refusal, and the sum payable, to the general commissioners for the division comprising the parish in which the person charged resides.

(2) The said last-mentioned commissioners on receipt of the certificate shall, by warrant under their hands and seals, empower the respective collectors of the said tax under this Schedule, or the collectors of the parish where the person chargeable resides, to levy the tax in the same manner and with the like powers as other tax is leviable by them under this Act.

(3) The collectors shall execute the warrant in the manner prescribed by this Act and as if the person chargeable had been charged with tax in the parish where he resides, and the moneys recovered shall be paid over to the proper officer.

14.—(1) If an office or employment of profit chargeable under this Schedule is executed by deputy, the deputy, if he is in receipt of the

profits thereof, shall pay the tax charged thereon, and deduct it out of the profits of the office or employment.

(2) If the profits of any officer or officers are received by any other officer on his or their behalf, or as a fund to be divided among such officers, the officer receiving the same shall pay the tax charged thereon and deduct it out of the sums received before they are handed over or divided.

(3) In the case of non-payment of the tax, the said deputy or officer receiving the profits shall be liable to such distress as is prescribed by this Act against any person holding the office or employment, and to any other remedy and penalty herein provided.

15. Where deduction of tax is authorised to be made out of any sums, the deduction shall be made at such times in each year as the said sums are payable.

16. If any emoluments of any office or employment of profit, or any annuity, pension, or stipend charged under this Schedule are charged with a sum payable to another person, such portion of the tax shall be deducted from that sum as the tax thereon would amount unto, and that person, or any agent or receiver on his behalf, shall allow the deduction on receipt of the residue of the sum payable.

17. If a deputy, clerk, or other person is employed under the holder of an office or employment of profit, and his salary or wages are paid out of the emoluments thereof, the holder of the office may deduct out of the salary or wages payable by him such a portion of the tax charged on the emoluments of the office or employment as the tax on the said salary or wages would amount unto, and the deduction shall be allowed upon receipt of the residue of the salary or wages.

18.—(1) The tax shall be assessed and charged by the respective commissioners for all the offices in each department, in the place where the said commissioners execute their offices, although certain of the offices in the same department may be executed elsewhere.

(2) A person chargeable in respect of an office or employment of profit shall be deemed to exercise it at the head office of the department under which it is held, and shall be assessed and charged at that head office, although the duties of the office or employment are performed, or any profits thereof are payable elsewhere, whether within the United Kingdom or not.

(3) An office shall be deemed to belong to, and shall be charged by or under, the principal officers of the department by or under whom the appointment to the office is made, but if the appointment is made by an inferior officer of the department, such office shall be charged by the commissioners by whom that inferior officer is chargeable in respect of his own office:

Provided that an officer who holds an appointment under the Great Seal or Privy Seal of England or Scotland, or an appointment under the Royal Sign Manual, or an appointment under the Treasury but not

exercised in the Treasury, shall be assessed and charged in that department in which his office is exercised.

(4) Nothing in this rule shall limit the right given by this Act to any other commissioners to assess and charge offices within their jurisdiction, although those offices may not be held under their appointment, or although the profits thereof may not be payable by them or by their order.

(5) Notwithstanding anything in this rule, a person may be assessed and charged under this Schedule by the commissioners acting for any parish in which he ordinarily resides *or in which he is employed* (*r*).

THE GENERAL RULES (*s*).

General Rules applicable to Schedules A, B, C, D and E.

1. Every body of persons shall be chargeable to tax in like manner as any person is chargeable under the provisions of this Act.

2.—(1) In assessing the tax chargeable under any Schedule upon a clergyman or minister of any religious denomination, the following deductions may be made from any profits, fees or emoluments of his profession or vocation—

(a) any sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty as a clergyman or minister;

(b) such part of the rent (not exceeding one-eighth), as the commissioners by whom the assessment is made may allow, paid by him in respect of a dwelling-house any part of which is used mainly and substantially for the purposes of his duty as such clergyman or minister;

and where any such clergyman or minister is in the occupation of a dwelling-house, but pays no rent therefor, he shall for the purposes of the foregoing provision be deemed to pay a rent equal to the annual value of the dwelling-house as assessed to tax under Schedule A.

(2) If no such deduction has been made, a proportionate part of the tax paid by him shall be repaid to the clergyman or minister on proof to the commissioners that any sum has been expended as aforesaid.

3. Every British subject whose ordinary residence has been in the United Kingdom shall be assessed and charged to tax, notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom for the purpose only of occasional residence abroad, and shall be charged as a person actually residing in the United Kingdom upon the whole amount of his

(*r*) Words inserted, Finance Act, 1922, s. 18 (4).
(*s*) See Finance Act, 1919, s. 28.

profits or gains, whether they arise from property in the United Kingdom or elsewhere, or from any allowance, annuity, or stipend (save as herein is excepted), or from any trade, profession, employment, or vocation in the United Kingdom or elsewhere.

4. The trustee, guardian, tutor, curator, or committee of any incapacitated person having the direction, control, or management of the property or concern of any such person, whether such person resides in the United Kingdom or not, shall be assessable and chargeable to tax in like manner and to the like amount as that person would be assessed and charged if he were not an incapacitated person.

5. A person not resident in the United Kingdom, whether a British subject or not, shall be assessable and chargeable in the name of any such trustee, guardian, tutor, curator, or committee, or of any factor, agent, receiver, branch, or manager, whether such factor, agent, receiver, branch, or manager has the receipt of the profits or gains or not, in like manner and to the like amount as such non-resident person would be assessed and charged if he were resident in the United Kingdom and in the actual receipt of such profits or gains.

6. A non-resident person shall be assessable and chargeable in respect of any profits or gains arising, whether directly or indirectly, through or from any factorship, agency, receivership, branch, or management, and shall be so assessable and chargeable in the name of the factor, agent, receiver, branch, or manager.

7. Where a non-resident person, not being a British subject or a British, Indian, Dominion, or Colonial firm or company, or branch thereof, carries on business with a resident person, and it appears to the commissioners by whom the assessment is made that, owing to the close connection between the resident person and the non-resident person, and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged, and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

8. Where it appears to the commissioners by whom the assessment is made or, on any objection or appeal, to the general or special commissioners, that the true amount of the profits or gains of any non-resident person chargeable with tax in the name of a resident person cannot in any case be readily ascertained, the commissioners may, if they think fit, assess and charge the non-resident person on a percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable as aforesaid,

and in such case the provisions of this Act relating to the delivery of statements by persons acting on behalf of others shall extend so as to require returns to be given by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as statements are to be delivered by persons acting for incapacitated or non-resident persons of profits or gains to be charged.

9.—(1) The amount of percentage under the last preceding rule shall in each case be determined, having regard to the nature of the business, by the commissioners by whom the assessment on the percentage basis is made, subject, in the case of an assessment made by the additional commissioners, to objection or appeal to the general or special commissioners.

(2) If either the resident person or non-resident person is dissatisfied with the percentage determined either in the first instance or by the general or special commissioners on objection or appeal, he may, within four months of that determination, require the commissioners to refer the question of the percentage to a referee or board of referees to be appointed for the purpose by the Treasury, and the decision of the referee or board shall be final and conclusive.

10. Nothing in these rules shall render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent not being an authorised person carrying on the regular agency of the non-resident person or a person chargeable as if he were an agent in pursuance of these rules, in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

11. The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of these rules in the name of a resident person shall not of itself make him chargeable in respect of profits arising from those sales or transactions.

12. Where a non-resident person is chargeable to income tax in the name of any branch, manager, agent, factor or receiver in respect of any profits or gains arising from the sale of goods or produce manufactured or produced out of the United Kingdom by the non-resident person, the person in whose name the non-resident person is chargeable may, if he thinks fit, apply to the commissioners by whom the assessment is made, or in case of an appeal to the general or special commissioners, to have the assessment to income tax in respect of those profits or gains made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and on proof to the satisfaction of the commissioners concerned of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

13. The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident person is chargeable, shall be answerable for all matters required to be done under this Act for the purpose of assessment and payment of tax.

14. Any person who has been charged under this Act in respect of any incapacitated or non-resident person as aforesaid may retain, out of money coming into his hands on behalf of any such person, so much thereof from time to time as is sufficient to pay the tax charged, and shall be indemnified for all such payments made in pursuance of this Act.

15.—(1) A receiver appointed by any court in the United Kingdom which has the direction and control of any property in respect of which tax is charged in accordance with the provisions of this Act shall be assessable and chargeable with tax in like manner and to the like amount as would be assessed and charged if the property were not under the direction and control of the court.

(2) Every such receiver shall be answerable for doing all matters and things required to be done under this Act for the purpose of assessment and payment of tax.

16. A married woman acting as a sole trader, or being entitled to any property or profits to her separate use, shall be assessable and chargeable to tax as if she were sole and unmarried:

Provided that—

(1) the profits of a married woman living with her husband shall be deemed the profits of the husband, and shall be assessed and charged in his name, and not in her name or the name of her trustee; and

(2) a married woman living in the United Kingdom separate from her husband, whether the husband be temporarily absent from her or from the United Kingdom or otherwise, who receives any allowance or remittance from property out of the United Kingdom, shall be assessed and charged as a feme sole if entitled thereto in her own right, and as the agent of the husband if she receives the same from or through him, or from his property, or on his credit.

17.—(1) If an application is made for the purpose in such manner and form as may be prescribed by the Commissioners of Inland Revenue, either by a husband or wife, within six months before the *sixth day of July* (*t*) in any year of assessment, income tax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of this Act with respect to the assessment, charge, and recovery of tax, and the penalties for failure to deliver a statement of profits or gains,

(*t*) Words substituted, Finance Act, 1919, s. 26.

shall, save as otherwise provided by this Act, apply as if they were not married.

(2) The Commissioners of Inland Revenue may require returns for the purposes of this rule to be made at any time, and the provisions of this Act relating to penalties for neglect or refusal to deliver, or for delay in delivering true and correct statements of profits or gains, shall, with the necessary modifications, apply in the case of the neglect or refusal to make, or wilful delay in making, any such return.

18. Where any person dies without having delivered a statement of all his profits or gains chargeable to tax with a view to an assessment thereon in due course, an assessment in respect of the profits or gains which arose or accrued to him before his death may be made at any time within the year of assessment, or within three years after the expiration thereof, upon his executors or administrators, and the amount of the tax thereon shall be a debt due from and payable out of his estate.

19.—(1) Where any yearly interest of money, annuity, or any other annual payment (whether payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether payable half-yearly or at any shorter or more distant periods), is payable wholly out of profits or gains brought into charge to tax, no assessment shall be made upon the person entitled to such interest, annuity, or annual payment, but the whole of those profits or gains shall be assessed and charged with tax on the person liable to the interest, annuity, or annual payment, without distinguishing the same, and the person liable to make such payment, whether out of the profits or gains charged with tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled, on making such payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the said payment was accruing due.

The person to whom such payment is made shall allow such deduction upon the receipt of the residue of the same, and the person making such deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid.

(2) Where any royalty, or other sum, is paid in respect of the user of a patent, wholly out of profits or gains brought into charge to tax, the person paying the royalty or sum shall be entitled, on making the payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the royalty or sum was accruing due.

20. The profits or gains to be charged on any body of persons shall be computed in accordance with the provisions of this Act on the full amount of the same before any dividend thereof is made in respect of

any share, right or title thereto, and the body of persons paying such dividend shall be entitled to deduct the tax appropriate thereto.

21.—(1) Upon payment of any interest of money, annuity, or other annual payment (*u*) charged with tax under Schedule D, or of any royalty or other sum paid in respect of the user of a patent, not payable, or not wholly payable, out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon at the rate of tax in force at the time of the payment.

(2) (*v*) Where any such payment as aforesaid is made by or through any person, that person shall forthwith deliver to the Commissioners of Inland Revenue, for the use of the Special Commissioners, an account of the payment, or of so much thereof as is not made out of profits or gains brought into charge, and of the tax deducted out of the payment or out of that part thereof, and the Special Commissioners shall assess and charge the payment of which an account is so delivered on that person.

(2A) The Special Commissioners may, where any person has made default in delivering an account required by this Rule, or where they are not satisfied with the account so delivered, make an assessment according to the best of their judgment, and if any person neglects or refuses to deliver an account so required, he shall forfeit the sum of one hundred pounds over and above the tax chargeable.

(2B) All the provisions of the Income Tax Acts relating—

(a) to persons who are to be chargeable with income tax and to income tax assessments;

(b) to appeals against such assessments;

(c) to the collection and recovery of income tax;

(d) to cases to be stated for the opinion of the High Court,

shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of income tax under this Rule, and the Special Commissioners shall, for the purpose of an assessment under this Rule, have any powers of a surveyor, and, for the purpose of the representation of the Crown before the Special Commissioners on any appeal under this Rule, any person nominated in that behalf by the Commissioners of Inland Revenue shall have all such powers as a surveyor has at and upon the determination of an appeal.

(3) The amount of annuities which an assurance company carrying on the business of granting annuities is entitled, for the purposes of this rule, to treat as having been paid out of profits or gains brought into charge to tax, shall not exceed the amount of the taxed income of its annuity fund.

(*u*) See Act of 1927, s. 25.

(*v*) Paras. (2), (2A), (2B) inserted in place of para. (2) by Act of 1927, s. 26.

22.—(1) If a difference arises—

(a) between tenant and landlord or any other persons with regard to the deduction on account of tax to be made from any annual sum; or

(b) between the occupier for the time being and any former occupier of lands, tenements, hereditaments or heritages, his executors, administrators, or assigns, with regard to the proportion of tax to be paid or allowed by either of them respectively;

the general commissioners of the division shall settle the proportion of the payments or deductions to be made according to the provisions of this Act, and, in default of payment, shall levy the same as if the proportions settled by them had been charged upon the respective persons, and shall pay over the same to the collector or to the proper person, as the case may require.

(2) In any such case the determination of the general commissioners shall be final.

(3) In this rule "annual sum" means any interest, annuity, rent, rentcharge, fee-farm rent, rent-service, quitrent, feu duty, or other rent or annual payment.

23.—(1) A person who refuses to allow a deduction of tax authorised by this Act to be made out of any payment, shall forfeit the sum of fifty pounds.

(2) Every agreement for payment of interest, rent, or other annual payment in full without allowing any such deduction shall be void (*x*).

SECOND SCHEDULE.

General Commissioners for certain Cities and Towns.

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THIRD SCHEDULE.

Qualifications of General Commissioners.

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FOURTH SCHEDULE.

Declarations.

Form of Declaration to be made by General, Additional and Special Commissioners acting in respect of Tax under Schedule D.

. . . . . .

Forms of Declaration to be made by Surveyors, Assessors, Collectors, Clerks to Commissioners.

. . . . . .

(*x*) See Act of 1927, s. 25.

FIFTH SCHEDULE.

Statements, Lists, and Declarations.

I.—By every Occupier of Lands, Tenements, Hereditaments or Heritages to be charged under Schedules A and B, or either of them.

A statement of the rent and annual value, or the annual value, as the case shall require, of all lands, tenements, hereditaments, or heritages, occupied in every parish, distinguishing the proportions in each parish, and estimating separately such as are occupied as owner or tenant, and also such as are held under different landlords, and also such as are chargeable by reference to the rent or annual value, or on the amount of profits; and also estimating separately the rent or annual value chargeable in respect of the property, and the amount chargeable in respect of the occupation, distinguishing the same as follows:—

Lands and tenements occupied as owner;

Lands and tenements let at rackrent within seven years;

Lands and tenements let at rackrent before the period of seven years, with the rent and annual value thereof estimated separately;

Lands and tenements let, but not at rackrent, with the rent and annual value thereof estimated separately;

The amount at which such land and tenements are rated to the poor;

The amount of any composition, rent, rentcharge, or annual payment paid in the preceding year to the rector or vicar or other person, for tithes of the above lands and tenements;

The amount of each deduction claimed in respect thereof, and stating if tithe-free, in part or in the whole, and the amount of any modus for tithes and real composition.

. . . . . (*y*).

XV.—General Declaration by each Person returning a Statement of Profits or Gains to be charged under Schedules A, B, D, or E.

Declaring the truth thereof, and that the same is fully stated on every description of property, or profits or gains, included in the Act relating to the said tax, and appertaining to such person, estimated to the best of his judgment and belief, according to the provisions of this Act.

. . . . . (*y*).

XVII.—Declarations and Statements of Total Income (*z*).

First. Declaration of the amount of value of property or profits or gains returned, or for which the claimant has been, or is liable to be, assessed.

Second. Declaration of the amount of rents, interests, annuities, or other annual payments, in respect of which the claimant is liable to

(*y*) Paras. II.—XIV. and XVI. repealed, Act of 1927, s. 47 and 6th Sched. Part I.

(*z*) Heading substituted, Finance Act, 1927, s. 46 and 5th Sched. Part III.

allow the tax, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment.

Third. Declaration of the amount of interest, annuities, or other annual payments to be made out of the property or profits or gains assessed on the claimant, distinguishing each source.

Fourth. Statement of the amount of income derived according to the three preceding declarations.

Fifth. Statement of any tax which the claimant may be entitled to deduct, retain or charge against any other person.

SIXTH SCHEDULE.

Forms.

[Note.—These forms may be varied or other forms prescribed by the Commissioners of Inland Revenue as circumstances require.]

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SEVENTH SCHEDULE.

Enactments Repealed.

. . . . . .

THE FINANCE ACT, 1919.

(9 & 10 Geo. 5, c. 32.)

[31st July, 1919.]

Part II.—Income Tax.

. . . . . .

16.—(1) Income from wounds and disability pensions to which this section applies shall be exempt from income tax (including super-tax) and shall not be reckoned in computing income for any of the purposes of the Income Tax Acts, for the year 1918-19, or any succeeding year of assessment.

(2) This section applies to—

(a) wounds pensions granted to members of the naval, military, or air forces of the Crown;

(b) retired pay of disabled officers granted on account of medical unfitness attributable to or aggravated by naval, military, or air-force service;

(c) disablement or disability pensions granted to members, other than commissioned officers, of the naval, military, or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service;

(d) disablement pensions granted to persons who have been employed in the nursing services of any of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service;

(e) injury and disablement pensions payable under any scheme made under the Injuries in War (Compensation) Act, 1914, the Injuries in War Compensation Act, 1914 (Session 2), and the Injuries in War (Compensation) Act, 1915, or under any War Risks Compensation Scheme for the Mercantile Marine:

Provided that, where the amount of any retired pay or pension to which this section applies is not solely attributable to disablement or disability, the relief conferred by this section shall extend only to such part as is certified by the Minister of Pensions, after consultation with the appropriate Government Department, to be attributable to disablement or disability.

(3) If any person has paid income tax or super-tax of an amount exceeding that which he would have been liable to pay if this section had been in force, he shall, on proof of the facts to the satisfaction of the Commissioners having jurisdiction in the matter, be entitled to repayment of the excess.

17.—(1) War gratuities to which this section applies shall be exempt and shall be deemed to have been exempt since the fourth day of August nineteen hundred and fourteen, from income tax (including super-tax), and shall not be reckoned in computing income for any of the purposes of the Income Tax Acts.

(2) This section applies to gratuities paid in respect of service in connection with the present war to members of any of the naval, military, or air forces of the Crown, or to persons who have been employed in the nursing services of any of those forces; and benefits on demobilisation paid to officers and members of Queen Mary's Auxiliary Army Corps, the Women's Royal Naval Service and the Women's Royal Air Force; and demobilisation payments to employees of the Joint War Committee of the British Red Cross Society and the Order of St. John of Jerusalem in England.

(3) If any person has paid income tax or super-tax of an amount exceeding that which he would have been liable to pay if this section had been in force, he shall, on proof of the facts to the satisfaction of the Commissioners having jurisdiction in the matter, be entitled to repayment of the excess notwithstanding anything in section forty-one of the Income Tax Act, 1918.

18.—(1) In estimating the amount of annual profits or gains arising or accruing from any trade the profits of which are chargeable to tax under Case I. of Schedule D, there shall, notwithstanding anything in Rule 5 of the rules applicable to Cases I. and II. of Schedule D, be allowed to be deducted, as expenses incurred in any year, on account of

any mills, factories, or similar premises owned by the person carrying on such trade and occupied by him for the purposes of the said trade, and situate outside the United Kingdom, a deduction equal to one-sixth of the annual value of those premises.

(2) In estimating the profits for any year of any of the concerns enumerated in Rules 1, 2, and 3 of No. III. of the rules applicable to Schedule A, there shall be allowed to be deducted, as expenses incurred in any year, on account of any mills, factories, or similar premises owned by the person carrying on the concern and occupied by him for the purposes of such concern, a deduction equal to one-sixth of the annual value of those premises.

(3) Annual value for the purposes of this section shall be estimated according to the principles governing the estimation of the annual value for the purposes of Schedule A of mills, factories, and similar premises in the United Kingdom.

19. (*Amendment of Schedule A, No. V., rule* 8) (*x*).

20. (*Extension of relief in respect of colonial income tax*) (*y*).

21. (*Extension of relief in respect of children, &c.*) (*z*).

22. Where a clergyman or minister of any religious denomination occupies a dwelling-house rent free by virtue of his office in such circumstances that the annual value of the house does not fall to be regarded as part of his income, he shall be entitled, on giving notice to the surveyor of taxes not later than the thirtieth day of September in any year, or, where the occupation of such clergyman or minister commenced after the thirtieth day of June, before the expiration of three months after the date of the commencement of such occupation, to require that the annual value of the house, after deducting therefrom the amount of any annual sum payable in respect of such house, shall for all purposes of income tax for that year be treated as earned income of such clergyman or minister.

In this section the expression "annual sum" has the same meaning as in Rule 4 (2) of No. VIII. of the rules applicable to Schedule A.

23. (*Amendment of s.* 26 *of* 8 *&* 9 *Geo.* 5, *c.* 40) (*a*).

24. Subsection (2) of section forty-seven of the Income Tax Act, 1918 (which provides for relief from income tax in the case of certain war savings certificates), shall have effect as though "any Act" were substituted for "section forty-one of the Finance Act, 1918."

25. Where the income which any individual is required under the Income Tax Acts to include in a statement of his total income from all sources for the purposes of income tax or super-tax for any year includes both (*b*)—

(i) interest received without deduction of income tax in respect of securities (in this section referred to as "original securities")

(*x*) Repealed, Finance Act, 1922, Third Sched., Part II.
(*y*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.; see sect. 27.
(*z*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.; see sect. 21.
(*a*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.
(*b*) Extended, Finance Act, 1920, s. 30; see also Act of 1921, s. 27.

which have been accepted as the equivalent of cash in payment for fully-paid allotments of Four Pounds per Cent. Victory Bonds or Four Pounds per Cent. Funding Loan, 1960-90 (in this section referred to as "substituted securities"); and

(ii) interest taxed by deduction in respect of such substituted securities;

and the amount of the interest so included exceeds the full amount of the interest for a complete year on the original securities; then, if that individual so requires, the excess—

(a) shall not be taken into account in ascertaining the total income from all sources of that individual for that year for the purposes of income tax or super-tax; but

(b) shall nevertheless be chargeable to income tax or super-tax for that year at such rate or rates and subject to such reliefs, if any, as would be applicable if such excess constituted the highest part of an income equal in amount to the amount of the total income of that individual exclusive of such excess.

26. The sixth day of July shall be substituted for the sixth day of May in section eight of the Income Tax Act, 1918, and in rule seventeen of the general rules as the date before which an application for separate assessment of husband and wife must be made under those provisions; and an application for the purposes of those provisions may in the case of persons marrying during the course of a year of assessment be made as regards that year at any time before the sixth day of July in the following year; and those provisions shall have effect accordingly.

27. (*Extension of relief in respect of wife and other relatives*) (*c*).

28. In this Part of this Act, and in any subsequent enactment relating to income tax, except where otherwise expressly provided—

References to Schedule A, B, C, D, or E (respectively) shall be construed as references to those Schedules in the Income Tax Act, 1918, as amended by any subsequent enactment;

The expression "the general rules" means the general rules applicable to Schedules A, B, C, D, and E, set out in the First Schedule to the Income Tax Act, 1918, as amended by any subsequent enactment;

The expression "the year 1919-20" means the year of assessment beginning on the sixth day of April nineteen hundred and nineteen, and any corresponding expression in which two years are similarly mentioned means the year of assessment beginning on the sixth day of April in the first mentioned of those years;

The expression "earned income" has the meaning assigned to it in section fourteen of the Income Tax Act, 1918 (*d*);

The expression "the Income Tax Acts" means the Income Tax Act, 1918, and any other enactments relating to income tax.

(*c*) Repealed, Act of 1920, sect. 64 (3), and Fourth Sched.; see sects. 18—20.
(*d*) Extended, Finance Act, 1920, s. 33.

PART V.—GENERAL.

. . . . . .

38.—(1) . . . . .

Part II. of this Act shall be construed together with the Income Tax Acts.

. . . . . .

(2) This Act may be cited as the Finance Act, 1919.

. . . . . .

THE FINANCE ACT, 1920.

(10 & 11 GEO. 5, c. 18.)

[4th August, 1920.]

. . . . . .

PART II.—INCOME TAX.

. . . . . .

15.— . . . .

(4) In estimating the total income of any individual for the purpose of super-tax, the amount of any earned income shall be taken to be the full amount of that income without the deduction of any allowance under this Part of this Act, and section five of the Income Tax Act, 1918, shall have effect accordingly.

16. (*Earned income*) (*e*).

17.—(1) An individual who, in the manner prescribed by the Income Tax Acts, makes a claim in that behalf and who makes a return in the prescribed form of his total income shall be entitled for the purpose of ascertaining the amount of the income on which he is to be charged to income tax (in this Act referred to as "the taxable income") to have such deductions as are specified in the five sections of this Act next following made from his assessable income (*f*).

(2) The provisions of sections twenty-seven, twenty-eight, twenty-nine, and thirty of the Income Tax Act, 1918, and of paragraph XVII. of the Fifth Schedule to that Act, shall apply for the purpose of claims for any such deductions as aforesaid as if those provisions were re-enacted in this Act and in terms made applicable to such claims.

18.—(1) The claimant, if he proves that for the year of assessment he has his wife living with him, or that his wife is wholly maintained by him during the year of assessment, and that he is not entitled in computing the amount of his income for that year for the purposes of the Income Tax Acts to make any deduction in respect of the sums paid for the maintenance of his wife, shall be entitled to a deduction of two

(*e*) Repealed, Act of 1925, s. 24 (6) and 5th Sched.: see now sect. 14 (1) of that Act.

(*f*) See also Act of 1924, s. 29; Act of 1927, s. 40 (1).

hundred and twenty-five pounds, and in any other case to a deduction of one hundred and thirty-five pounds.

(2) If the total income of the claimant includes any earned income of his wife the deduction to be allowed under this section shall be increased by an equal amount to *five-sixths* (*g*) of the amount of that earned income but not exceeding in any case forty-five pounds.

19.—(1) *If the claimant proves that he is a widower and that for the year of assessment a person, being a female relative of his or of his deceased wife, is resident with him for the purpose of having the charge and care of any child of his or in the capacity of a housekeeper, or that he has no female relative of his own or of his deceased wife who is able and willing to take such charge or act in such capacity and that he has employed some other female person for the purpose he shall, subject as hereinafter provided, be entitled to a deduction of sixty pounds* (*h*) *in respect of that female relative or female person* (*i*).

Provided that—

(a) no deduction shall be allowed under this section unless the claimant proves that no other individual is entitled to a deduction in respect of the female relative under the provisions of this Part of this Act or, if any other individual is so entitled, that the other individual has relinquished his claim thereto; and

(b) no deduction shall be allowed under this section where the female relative is a married woman living with her husband, and the husband has claimed and been allowed a deduction of two hundred and twenty-five pounds under the preceding provisions of this Part of this Act; *and*

(*c*) *not more than one deduction of sixty pounds shall be allowed to any claimant under this section in any year* (*k*).

(2) In this section the expression "child" means a child in respect of whom a deduction is allowed under this Part of this Act.

(3) This section shall apply to a claimant being a widow as it applies to a claimant being a widower, with the substitution of "her deceased husband" for "his deceased wife."

20. If the claimant proves—

(a) that he is unmarried and that he has living with him either his mother, being a widow or a person living apart from her husband, or some other female relative, for the purpose of having the charge and care of any brother or sister of his, being a child in respect of whom a deduction is allowed under this Part of this Act, and that he maintains the mother or other relative at his own expense; and

(*g*) See Act of 1927, s. 40 (1) and 5th Sched. Part I.

(*h*) Increased to sixty pounds, Act of 1924, s. 21.

(*i*) Sub-sect. (1) substituted, Act of 1924, s. 22; and see Act of 1927, s. 40 (1).

(*k*) Added, Act of 1924, s. 22.

(b) that neither he nor any other individual is entitled to a deduction in respect of the same person under any of the other provisions of this Part of this Act, or if any other individual is entitled to any such deduction that the other individual has relinquished his claim thereto,

he shall be entitled to a deduction of *sixty* (*l*) pounds.

21 (*m*).—(1) If the claimant proves that he has living at *any time within* (*n*) the year of assessment any child who is either under the age of sixteen years or who, if over the age of sixteen years at the commencement of that year, is receiving full time instruction at any university, college, school, or other educational establishment, he shall, subject to the provisions of this section, be entitled in respect of one child to a deduction of *sixty* (*n*) pounds and in respect of each subsequent child to a deduction of *fifty* (*n*) pounds.

The expression "child" in this provision includes a step-child and an illegitimate child whose parents have married each other after his birth.

(2) If the claimant proves that for the year of assessment he has the custody of and maintains at his own expense any child who is under the age of sixteen years at the commencement of that year, or who, if over the age of sixteen years at the commencement of that year, is receiving such full-time instruction as aforesaid, and that neither he nor any other individual is entitled to a deduction in respect of the same child under the foregoing provisions of this section or under any of the other provisions of this Part of this Act, or, if any other individual is entitled to such a deduction, that that other individual has relinquished his claim thereto, he shall be entitled in respect of the child to the same deduction as if the child were a child of his.

(3) No deduction shall be allowed under this section in respect of any child who is entitled in his own right to an income exceeding *sixty* (*n*) pounds a year.

Provided that in calculating the income of the child for the purposes of the foregoing provision no account shall be taken of any income to which the child is entitled as the holder of a scholarship, bursary or other similar educational endowment.

(4) If any question arises as to whether any person is entitled to an allowance under this section in respect of a child who is over the age of sixteen years, as being a child who is receiving such full-time instruction as aforesaid, the Commissioners of Inland Revenue may, on the request of the Income Tax Commissioners concerned, consult the Board of Education.

In the application of this subsection to Scotland and Ireland the Scottish Education Department and the Lord Lieutenant of Ireland shall respectively be substituted for the Board of Education.

22 (*m*).—(1) If the claimant proves that he maintains at his own expense any person, being a relative of his or of his wife who is incapa-

(*l*) Increased to sixty, Act of 1924, s. 21; and see Act of 1927, s. 40 (1).
(*m*) See Act of 1927, s. 40 (1). (*n*) Amendments made, Act of 1928, s. 16 (1).

citated by old age or infirmity from maintaining himself, or his or his wife's widowed mother, whether incapacitated or not, and being a person whose total income from all sources does not exceed fifty pounds a year, he shall be entitled to a deduction of twenty-five pounds in respect of each person whom he so maintains, and a like deduction shall be made in the case of a claimant who, by reason of old age or infirmity, is compelled to depend upon the services of a daughter resident with and maintained by him or her.

(2) Where two or more persons jointly maintain any such person as aforesaid, the deduction to be made under this section shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person.

(3) This section shall apply to a claimant being a female person as it applies to a claimant being a male person with the substitution of "husband" for "wife."

23. The rate at which the first two hundred and twenty-five pounds of the taxable income of an individual shall be charged to income tax shall be half the standard rate of tax (*o*).

24.—(1) Subject as hereinafter provided, no allowance in respect of earned income, and no deduction from assessable income, shall be given or made, and income tax on the first two hundred and twenty-five pounds of the taxable income shall not be chargeable at the reduced rate, under the foregoing provisions of this Part of this Act, and no relief shall be granted under section thirty-two of the Income Tax Act, 1918, in the case of any individual who is not resident in the United Kingdom:

Provided that the foregoing provision shall not apply in the case of any individual who satisfies the Commissioners of Inland Revenue that he or she—

(a) is a British subject; or

(b) is a person who is or has been employed in the service of the Crown, or who is employed in the service of any missionary society or in the service of any native State under the protection of His Majesty; or

(c) is resident in the Isle of Man or the Channel Islands; or

(d) has previously resided within the United Kingdom and is resident abroad for the sake of his or her health or the health of a member of his or her family resident with him or her; or

(e) is a widow whose late husband was in the service of the Crown;

so, however, that no such allowance, deduction, reduction of rate, or relief as aforesaid shall be given so as to reduce the amount of the income tax payable by that individual below an amount which bears the same proportion to the amount which would be payable by him by way of tax if the tax were chargeable on his total income from all sources, including income which is not subject to income tax charged in the

(*o*) See Act of 1927, s. 40 (2).

United Kingdom, as the amount of the income subject to income tax so charged bears to the amount of his total income from all sources (*p*).

(2) . . . . (*q*).

25.—(1) Where, on an application made for the purpose under the provisions of the Income Tax Acts, income tax for any year is assessable and chargeable on the incomes of the husband and wife respectively as if they were not married:—

(a) All the provisions of the Income Tax Acts relating to claims for an allowance in respect of earned income and deductions from assessable income and for relief under section thirty-two of the Income Tax Act, 1918, and the proof to be given with respect thereto, shall apply as if they were not married; and

(b) The income of the husband and wife shall be aggregated in estimating the amount to be repaid or deducted in respect of the deductions or relief aforesaid, and such amount shall not exceed the total amount that would have been repaid or deducted on account of such deductions or relief if such application as aforesaid had not been made; and (*r*)

(c) The benefit of any such deduction or relief may be given either by way of reduction of the amount of the tax to be paid or by repayment of any excess of tax which has been paid, or by both of these means, as the case requires, and shall be given to the husband and the wife—

(i) as regards the deduction in respect of earned income in proportion to the amounts of their respective earned incomes;

(ii) as regards any deduction or reduction under subsection (2) of section fifteen of the Finance Act, 1925, in proportion to the amounts of their respective total incomes;

(iii) as regards any other deductions in proportion to the amounts of tax which would have been payable by them respectively, if the only deductions allowable had been the deduction referred to in the foregoing sub-paragraph (i) or the deduction or reduction referred to in the foregoing sub-paragraph (ii), as the case may be; and

(iv) as regards relief given under section thirty-two of the Income Tax Act, 1918, to the husband or wife, as the case may be, by whom the payment is made:

Provided that in the case of a deduction in respect of a dependent relative or in respect of a child under subsection (2) of section twenty-one of this Act, the deduction shall be given to that one of the married persons by whom the relative or child is maintained (*r*).

(*p*) See Act of 1926, s. 20, *infra*.
(*q*) Repealed, S. L. R. 1927 (17 & 18 Geo. 5, c. 42).
(*r*) Paras. (b) and (c) substituted by Act of 1927, s. 46 and 5th Sched. Part II. 1.

(d) For the purpose of any of the above-mentioned allowances or deductions or reliefs a return may be made by the husband or the wife of the total income of the husband and wife, but if the Commissioners of Inland Revenue are not satisfied with the return they may obtain a return from the wife or husband, as the case may be.

(2) The Commissioners of Inland Revenue may require returns for the purposes of this section to be made at any time, and the provisions of the Income Tax Acts relating to penalties for neglect or refusal to deliver or for delay in delivering true and correct statements of profits or gains shall, with the necessary modifications, apply in the case of the neglect or refusal to make or wilful delay in making any such return.

26. Section thirty-two of the Income Tax Act, 1918 (which relates to relief in respect of life insurance premiums), shall be amended as follows:—

(1) For the words in subsection (1) from "(b) who is" to the end of the subsection there shall be substituted the following words (*s*): . . .

(2) At the end of subsection (2) there shall be inserted the words "at the appropriate rate."

(3) In paragraph (c) of subsection (3) after the words "or not" there shall be inserted the words "the amount of the tax calculated at the appropriate rate on an amount equal to."

(4) In paragraph (d) of subsection (3) for the words "exceed one hundred pounds in all" there shall be substituted the words "in any case exceed the amount of the tax calculated at the appropriate rate on one hundred pounds."

(5) In paragraph (e) of subsection (3) for the words "three shillings in the pound" there shall be substituted the words "half the standard rate of tax."

(6) In the proviso to paragraph (e) of subsection (3) after the word "business" there shall be inserted the words "or for the benefit of the wife or widow of any such employee or person or of his children or other dependants."

(7) At the end of the section there shall be inserted the following new subsections (*t*):— . . .

27.—(1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income tax for any year of assessment on any part of his income proves to the satisfaction of the special commissioners that he has paid Dominion income tax for that year in respect of the same part of his income, he shall be entitled to relief from United

(*s*) The words substituted will be found set out in sect. 32 of the Act of 1918.

(*t*) The new sub-sects. (8) and (9) will be found set out in sect. 32 of the Act of 1918.

Kingdom income tax paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

(a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom *income* (*u*) tax, the rate at which relief is to be given shall be the Dominion rate of tax:

(b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of United Kingdom *income* (*u*) tax:

. . . . (*u*).

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax.

(3) Where by reason of the allowance of relief under this section the rate of United Kingdom income tax deducted from or paid in respect of any part of the income of any individual is less than the standard rate, and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an adjustment shall be made in allowing to that individual any *relief to which he may be entitled under the provisions of this Part of this Act relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income* (*x*) as may be necessary to secure that the amount of United Kingdom income tax finally paid or borne by him shall be equal to the amount which would have been paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case.

(4) Notwithstanding anything in the Rules applicable to Case IV. or Case V. of Schedule D or in any other provision of the Income Tax Acts, no deduction shall be made on account of the payment of Dominion income tax in estimating income for the purposes of United Kingdom income tax, and where income tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom income tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income tax shall be deemed to be income arising or received after deduction of Dominion income tax and an addition shall, in estimating income for the purposes of the United Kingdom income tax, be made to that income of the proportionate part of the income tax paid or payable in the Dominion in respect of the income out of which that income arises or is received together with the full amount of any Dominion income tax directly charged or chargeable in the Dominion in respect of that income:

(*u*) Words inserted and paragraph omitted, Act of 1927, s. 46 and 5th Sched. Part II. 2.

(*x*) Words in *italics* to be "construed as a reference to the relief substituted by Part III. of the Act of 1927 for the relief under sect. 23 of the Finance Act, 1920," *ibid.*

Provided that—

(a) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the special commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount of the addition to be made under this subsection, the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under Case VI. of Schedule D; and

(b) where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income tax in respect of the payment of United Kingdom income tax, then in assessing or charging income tax in the United Kingdom in respect of income assessed or charged to income tax in that Dominion a deduction shall be allowed in estimating income for the purpose of United Kingdom income tax of an amount equal to the difference between the amount of the Dominion income tax paid or payable in respect of the income and the total amount of the relief granted from the United Kingdom income tax in respect of the Dominion income tax for the period on the income of which the assessment or charge to United Kingdom income tax is computed.

In this subsection the expression "dividends" includes any interest, annuities, dividends, shares of annuities, pensions, or other annual payments or sums in respect of which tax is charged under the Rules applicable to Schedule C or under Rule VII. of the Miscellaneous Rules applicable to Schedule D.

(5) Where under Rule 20 of the General Rules applicable to Schedules A, B, C, D and E, a body of persons is entitled to deduct income tax from any dividends, tax shall not in any case be deducted at a rate exceeding the rate of the United Kingdom income tax as reduced by any relief from that tax given under this section in respect of any payment of Dominion income tax.

(6) Where under the law in force in any Dominion provision is made for the allowance of relief from Dominion income tax in respect of the payment of United Kingdom income tax, the obligation as to secrecy imposed by the Income Tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the Government of the Dominion of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed both from United Kingdom income tax and from Dominion income tax.

(7) The Commissioners of Inland Revenue may from time to time

make regulations generally for carrying out the provisions of this section, and may, in particular, by those regulations provide:—

(a) For making such arrangements with the Government of any Dominion to which the last preceding subsection applies as may be necessary to enable the appropriate relief to be granted:

(b) For prescribing the year which in relation to any Dominion income tax is, for the purposes of relief under this section, to be taken as corresponding to the year of assessment for the purposes of United Kingdom income tax.

(8) In this section:—

(a) The expression "Dominion" means any British possession, or any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions:

(b) The expressions "United Kingdom income tax" . . . (*y*) mean respectively income tax . . . (*y*) chargeable in accordance with the provisions of the Income Tax Acts:

(c) The expression "Dominion income tax" means any income tax or super-tax charged under any law in force in any Dominion, if that tax appears to the special commissioners to correspond with United Kingdom income tax . . . . (*y*):

(d) The expression "Dominion rate of tax" means the rate determined by dividing the amount of the Dominion income tax paid for the year by the amount of the income in respect of which the Dominion income tax is charged for that year, except that where the Dominion income tax is charged on an amount other than the ascertained amount of the actual profits the Dominion rate of tax for the purposes of this section shall be determined by the special commissioners.

The "appropriate rate of United Kingdom income tax" for any year of assessment shall be as follows:— (*z*)

(a) In the case of a person whose income is chargeable at the standard rate only, a rate ascertained by dividing the amount of tax payable by him for that year in respect of his total income (before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of section twenty-seven of the Finance Act, 1920) by the amount of his total income less any amount by reference to which he is by virtue of subsection (1) of section forty of this Act granted relief from income tax by means of a deduction of tax;

(*y*) References to super-tax omitted, *ibid.*

(*z*) Provisions substituted for 2nd para. of sub-sect. (8) (d), *ibid.*

(b) In the case of a person part of whose total income is chargeable at a rate or rates in excess of the standard rate, the sum of the following rates:—

(i) The rate which would have been the appropriate rate in the case of that person if his income had been chargeable at the standard rate only; and

(ii) The rate ascertained by dividing the amount of the sur-tax payable by that person for the preceding year by the amount of his total income for that year:

Provided that, as respects the year 1928-29, this paragraph shall have effect as if for sub-paragraph (b) (ii) thereof there were substituted the following words:—

"The rate ascertained by dividing the amount of the super-tax payable by that person for that year by the amount of his total income from all sources for that year as estimated for super-tax purposes."

28.—(1) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school, or other educational establishment, shall be exempt from income tax (including super-tax), and no account shall be taken of any such income in computing the amount of income for the purposes of the Income Tax Acts.

(2) In this section the expression "scholarship" includes an exhibition, bursary, or any other similar educational endowment.

(3) If any question arises whether any income is income arising from a scholarship held as aforesaid, the Commissioners of Inland Revenue may, on the request of the Income Tax Commissioners concerned, consult the Board of Education.

In the application of this subsection to Scotland and Ireland, the Scottish Education Department and the Lord Lieutenant, respectively, shall be substituted for the Board of Education.

29. (*Amendment of Finance Act,* 1919, *s.* 19) (*a*).

30. Section twenty-five of the Finance Act, 1919 (which relates to the tax on income from converted Government securities), shall apply to securities which have been exchanged for five and three-quarter per cent. Exchequer Bonds, 1925, or for any other Government securities which may be issued at any time after the commencement of this Act, as it applies to securities which have been accepted as the equivalent of cash in payment for allotments of Victory Bonds.

31. . . . . (*b*).

32. The amendments specified in the second column of the Third Schedule to this Act, which are consequential or relate to minor details, shall be made in the provisions of the Income Tax Act, 1918, specified in the first column of that schedule.

(*a*) Repealed, Finance Act, 1922, 3rd Sched. Part II.
(*b*) Repealed, S. L. R. 1927 (17 & 18 Geo. 5, c. 42).

33. In this Part of this Act and in any subsequent enactment relating to income tax, except where otherwise expressly provided—

The expression "earned income" means income which is earned income within the meaning of section fourteen of the Income Tax Act, 1918, and also includes any income arising in respect of Civil List pensions granted under the Civil List Act, 1837, as amended by any subsequent enactment:

The expression "relative" includes any person of whom the person claiming a deduction had the custody and whom he maintained at his own expense while that person was under the age of sixteen years:

. . . . (*c*):

The expression "assessable income" in the case of any income other than earned income means the amount of that income as estimated in accordance with the provisions of the Income Tax Acts.

. . . . . .

PART V.—CORPORATION PROFITS TAX.

. . . . . .

PART VII.—GENERAL.

. . . . . .

61.—(1) Where any assessment to income tax, excess profits duty, or munitions exchequer payments for any year or period, or any duplicate of assessment to income tax for any year, or any return or other document relating to income tax, excess profits duty, or munitions exchequer payments, has been lost or destroyed, or has been so defaced or damaged as to be illegible or otherwise useless, the commissioners, surveyors, assessors, collectors, and other officers respectively having powers in relation to income tax, excess profits duty, or munitions exchequer payments, as the case may be, may, notwithstanding anything in any enactment to the contrary, do all such acts and things as they might have done, and all acts and things done under or in pursuance of this section shall be as valid and effectual for all purposes as they would have been if the assessment or duplicate of assessment had not been made, or the return or other document had not been made or furnished, or required to be made or furnished:

Provided that, where any person who is charged with income tax, excess profits duty, or munitions exchequer payments in consequence or by virtue of any act or thing done under or in pursuance of this section, proves to the satisfaction of the commissioners having jurisdiction in the case that he has already paid any income tax, excess profits duty, or munitions exchequer payments for the same year or period in respect of the subject matter and on the account in respect of

(*c*) Definition of "standard rate" repealed, Act of 1927, s. 47 and 6th Sched. Part I.

and on which he is so charged, relief shall be given to the extent to which the liability of that person has been discharged by the payment so made either by abatement from the charge or by repayment, as the case may require.

(2) In this section the expression "Commissioners" means, as the case may require, either the Commissioners of Inland Revenue or the Income Tax Commissioners concerned and the expression "income tax" includes "super-tax."

64.—(1) *Construction, short title, and repeal.*

. . . . . .

Part II. of this Act shall be construed together with the Income Tax Acts.

. . . . . .

(2) This Act may be cited as the Finance Act, 1920 (*d*).

THE FINANCE ACT, 1921.

(11 & 12 Geo. 5, c. 32.)

[4th August, 1921.]

Part II.—Income Tax.

. . . . . .

25.—(1) For the purpose of removing doubts, it is hereby declared that sections forty-three and forty-four of the Income Tax Act, 1918 (which grant certain reliefs for any year of assessment as respects which they are respectively continued in force by any Act), were not continued in force for the year 1920-21, and the said sections are hereby repealed.

(2) If, in any case, any person has been assessed or charged to tax (including super-tax) or has been allowed relief from tax on the basis that the said sections were continued in force for the year 1920-21, all such adjustments, amendments of assessments, and payments of tax shall be made as are necessary for securing that that person shall be charged to and pay tax (including super-tax) on the basis that the said sections were not continued in force for the said year.

26. . . . . (*e*).

27.—(1) The holder of any inscribed bonds or other securities, the interest on which is by virtue of directions given under section forty-nine of the Income Tax Act, 1918, or under any enactments repealed by that Act, payable without deduction of income tax, may make an

(*d*) The Third Schedule contains consequential and minor amendments of the Act of 1918 which are embodied in the text, including a note which provides:—In this Sched. the expression "allowance or deduction" means any allowance, deduction, or reduction of rate made or allowed under sections 16 to 23, both inclusive, of this Act.

(*e*) Repealed, Act of 1926, s. 37 and 5th Sched. Part I.

application to the Bank under this section requesting that income tax shall be deducted from the interest on those bonds or securities before payment thereof, and, where any such application is made, income tax in respect of the interest on those bonds or securities shall, so long as they remain inscribed in the name of the person making the application and subject to the withdrawal of the application as hereinafter authorised, be deducted and charged in the same manner as if they were not bonds or securities to which the said section applied, and section twenty-five of the Finance Act, 1919, shall have effect as if, during the period in which the interest was paid without deduction of income tax, those bonds and securities were original securities, and as if thereafter they were substituted securities within the meaning of that section.

(2) An application under this section shall be in such form as the Bank, with the approval of the Treasury, may prescribe, and any application made less than two months before the date on which any interest is payable shall only have effect as regards any payment of interest subsequent to the payment falling due on that date.

(3) An application made under this section may at any time be withdrawn by notice to the Bank in such form as the Bank, with the approval of the Treasury, may prescribe, but an application so withdrawn shall, notwithstanding the withdrawal, continue to have effect as regards any interest payable less than two months after the date on which the notice is received at the Bank.

(4) Where any bonds or securities to which this section applies are held upon trust, the holders of the bonds or securities may make an application under this section in respect thereof without the consent of any other person, notwithstanding anything in the instrument creating the trust.

(5) In this section—

The expression "the Bank" means the Bank of England or the Bank of Ireland as the case requires;

The expression "inscribed" means inscribed in the books of the Bank and includes "registered."

28.—(1) Notice of any claim for relief under section twenty-seven of the Finance Act, 1920 (which gives relief from United Kingdom income tax in respect of Dominion income tax), together with particulars of the claim, shall be given in writing to the surveyor of taxes or, in the case of a claim made by a person who is not resident in the United Kingdom, to the Commissioners of Inland Revenue, and, where an objection is made to the claim by the surveyor or commissioners, as the case may be, the special commissioners shall hear and determine the claim in like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the

statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(2) The special commissioners in determining a claim under the said section twenty-seven shall have power to determine the rate at which relief is to be given and the amount of the relief to be given, and all questions whatsoever incidental to the determination of the matters as aforesaid.

(3) The provisions of this section shall apply to any claims under section forty-three of the Finance Act, 1916, or section fifty-five of the Income Tax Act, 1918, which have not been finally determined at the commencement of this Act, as those provisions apply to claims under the said section twenty-seven.

29. In any proceedings for the recovery of income tax under subsection (2) of section one hundred and sixty-nine of the Income Tax Act, 1918 (which provides for the summary recovery of income tax assessed and charged quarterly), a written statement as to the wages paid for any period to the person against whom the proceedings are brought, purporting to be signed by his employer for that period or by any responsible person in the employment of the employer, shall be primâ facie evidence that the wages therein stated to have been paid to the person charged have in fact been so paid.

30.—(1) Exemption shall be granted—

(a) from income tax under Schedule A in respect of lands, tenements, hereditaments, and heritages owned and occupied by a charity, not being such lands, tenements, hereditaments or heritages as are mentioned in No. VI. of Schedule A (*f*);

(b) from income tax under Schedule B in respect of lands occupied by a charity:

Provided that the exemption under this paragraph shall not apply in the case of lands which are occupied for the purpose of husbandry unless the work in connection with the husbandry is mainly carried on by beneficiaries of the charity and the profits, if any, arising therefrom are applied solely to the purposes of the charity;

(c) *from income tax under Schedule D in respect of the profits of a trade carried on by any charity, if the profits are applied solely to the purposes of a charity and either—*

(i) the trade is exercised in the course of the actual carrying out of a primary purpose of the charity; or

(ii) the work in connection with the trade is mainly carried on by beneficiaries of the charity (*g*).

(2) The exemption granted by paragraphs (a) and (b) of subsection (1) of this section shall not extend to tax in respect of any rent payable

(*f*) See Act of 1926, s. 28, proviso.

(*g*) Paragraph substituted, Act of 1927, s. 24.

or other annual payment to be made by a charity in respect of the lands, tenements, hereditaments, or heritages, or to any parts of those lands, tenements, hereditaments, or heritages, which are in the use and enjoyment of a person whose total annual income from all sources estimated in accordance with the provisions of the Income Tax Acts amounts to not less than one hundred and fifty pounds.

(3) In this section the expression "charity" means any body of persons or trust established for charitable purposes only.

31. The proviso to paragraph (c) of Rule 3 of the rules applicable to Cases I. and II. of Schedule D in the Income Tax Act, 1918, shall have effect as though the words "shall not, unless in any particular case the Commissioners are of opinion that, having regard to all the circumstances, some greater sum ought to be deducted, exceed two-thirds," were therein substituted for the words "shall not exceed two-thirds."

32.—(1) Subject to the provisions of this section and to any regulations made thereunder, exemption from income tax shall be allowed in respect of income derived from investments or deposits of a superannuation fund, and, subject as aforesaid, any sum paid by an employer or employed person by way of contribution towards a superannuation fund shall, in computing profits or gains for the purpose of an assessment to income tax under Case I. or Case II. of Schedule D or under Schedule E, be allowed to be deducted as an expense incurred in the year in which the sum is paid:

Provided that—

(a) no allowance shall be made under the foregoing provision in respect of any contribution by an employed person which is not an ordinary annual contribution, and, where a contribution by an employer is not an ordinary annual contribution, it shall, for the purpose of the foregoing provision, be treated as the Commissioners may direct, either as an expense incurred in the year in which the sum is paid or as an expense to be spread over such period of years as the Commissioners think proper; and

(b) no allowance shall be made under this section in respect of any payments in respect of which relief can be given under section thirty-two of the Income Tax Act, 1918.

(2) Income Tax chargeable in respect of an annuity paid out of a superannuation fund to a person residing in the United Kingdom shall, if the Commissioners so direct, be assessed and charged on the annuitant under Case VI. of Schedule D instead of being deducted and accounted for under Rule 21 of the General Rules, and tax shall be computed on the full amount of the annuity arising in the year of assessment.

(3) For the purposes of this section, the expression "superannuation fund" means, unless the context otherwise requires, a fund which is approved for those purposes by the Commissioners, and, subject as

hereinafter provided, the Commissioners shall not approve any fund unless it is shown to their satisfaction that—

(a) the fund is a fund bonâ fide established under irrevocable trusts in connection with some trade or undertaking carried on in the United Kingdom by a person residing therein;

(b) the fund has for its sole purpose the provision of annuities for persons employed in the trade or undertaking either on retirement at a specified age or on becoming incapacitated at some earlier age;

(c) the employer in the trade or undertaking is a contributor to the fund;

(d) the fund is recognised by the employer and employed persons in the trade or undertaking:

Provided that the Commissioners may, if they think fit, and subject to such conditions, if any, as they think proper to attach to the approval, approve a fund, or any part of a fund, as a superannuation fund for the purposes of this section—

(i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund; or

(ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose; or

(iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the United Kingdom and by a person not residing therein.

(4) The Commissioners may make regulations generally for the purpose of carrying this section into effect and, in particular, without prejudice to the generality of the foregoing provision, may by such regulations—

(a) provide for the charging of and accounting for tax in respect of contributions (including interest) repaid to a contributor to a superannuation fund and on lump sums paid in commutation of or in lieu of annuities payable out of a superannuation fund as if any sums so repaid or paid were income of the year in which they are repaid or paid;

(b) require the trustees or other persons having the management of a superannuation fund, or an employer whose employees contribute to a superannuation fund, to deliver to the Commissioners such information and particulars as the Commissioners may reasonably require for the purposes of this section;

(c) prescribe in the manner in which claims for relief under this section are to be made and approved, and in which applications for the approval of a superannuation fund are to be made;

(d) provide for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this section;

(e) provide for determining what contributions to a superannuation fund are to be treated as ordinary annual contributions for the purposes of this section.

(5) Where at the commencement of this Act there is in force any arrangement between the Commissioners and the persons having the management of a superannuation fund by which provision is made for allowing any such deductions for the purpose of income tax as may be allowed for that purpose under this section, the arrangement shall, if the fund is approved as a superannuation fund for the purposes of this section for the year 1921-22, be deemed to have ceased to operate as from the sixth day of April, nineteen hundred and twenty-one, and, if the fund is not so approved, shall cease to operate as from the sixth day of April, nineteen hundred and twenty-two.

(6) In this section the expression "the Commissioners" means the Commissioners of Inland Revenue.

33.—(1) All income receivable from any source whatsoever for the purposes of a special scheme or a supplementary scheme established under the Unemployment Insurance Act, 1920, by the body charged with the administration of the scheme shall be exempt from income tax.

(2) Any claim for exemption under this section shall be made and any such claim shall be allowed in the same manner as in the case of the exemption allowed under subsection (5) of section thirty-nine of the Income Tax Act, 1918.

34.—(1) Income tax shall not be charged in respect of a sewer vested in a local authority in the United Kingdom:

Provided that the foregoing exemption shall not extend to any rent payable or other annual payment to be made by the local authority in respect of the sewer.

(2) In this section—

The expression "sewer" means a sewer maintained by a local authority in pursuance of their statutory duties in relation to the public health;

The expression "local authority" means a public body having power under any enactment relating to the public health to construct and maintain sewers.

. . . . . .

PART VI.—GENERAL.

. . . . . .

65.—(1) Part II. of this Act shall be construed together with the Income Tax Acts.

(2) This Act may be cited as the Finance Act, 1921.

THE FINANCE ACT, 1922.

(12 & 13 Geo. 5, c. 17.)

[20th July, 1922.]

Part II.—Income Tax.

. . . . . .

17. The following rule shall be substituted for rule 2 of the rules applicable to Case III. of Schedule D (*q*):—

18.—(1) Such profits or gains arising or accruing to any person from an office, employment or pension as are, under the Income Tax Act, 1918, chargeable to income tax under Schedule D (other than the profits or gains chargeable under Case V. of Schedule D, or under Rule 7 of the Miscellaneous Rules applicable to Schedule D), shall cease to be chargeable under that schedule and shall be chargeable to tax under Schedule E, and the rules applicable to that schedule shall apply accordingly subject to the provisions of this Act.

(2) Rule 2 of the rules applicable to Cases I. and II. of Schedule D (which relates to the assessment and charge of weekly wage-earners), shall be deemed to be one of the rules applicable to Schedule E.

(3) Rule 7 of the Rules applicable to Schedule E (which relates to the charge of tax in respect of offices and employments of profit held under a railway company), shall apply to all offices and employments held under, and pensions paid by, a railway company:

Provided that nothing in this subsection shall affect the provisions relating to the quarterly assessment and the collection of income tax in the case of weekly wage-earners employed by way of manual labour.

(4) Paragraph (5) of Rule 18 of the rules applicable to Schedule E shall have effect as though the words "or in which he is employed" were inserted at the end thereof.

(5) The following paragraph shall be inserted at the end of Rule 5 of the rules applicable to Schedule E (*r*):—

(6) The provisions of subsection (1) and subsection (3) of this section shall have effect and shall be deemed always to have had effect, for the purpose of any assessment to income tax which is made or becomes final and conclusive after the first day of May, nineteen hundred and twenty-two, in respect of any employment (other than that of a weekly wage-earner employed by way of manual labour) under any public department, or under any company, society or body of persons or other employer mentioned in Rule 6 of the rules applicable to Schedule E.

(7) Income tax in respect of profits or gains which would but for the provisions of this section have been chargeable under Schedule D for the year 1922-23, may be charged for that year either under Schedule D or under Schedule E, but the tax shall in all cases be computed in accordance with the provisions and rules applicable to Schedule E as amended by this Act.

(*q*) The rule substituted will be found set out *supra*, p. 506.
(*r*) The added paragraph will be found set out *supra*, p. 513.

19. Any person charged to income tax under Schedule E may appeal to the Special Commissioners against any assessment in respect of his emoluments for any year, or against the amount of tax deducted therefrom, and the provisions of section one hundred and forty-eight of the Income Tax Act, 1918, shall, with any necessary modification, apply to any such appeal:

Provided that, where any such person has under any other provisions of the Income Tax Acts any right of appeal to any other body of Commissioners, he may appeal either under those provisions or under this section, but not under both.

20.—(1) Any income—

(a) of which any person is able, or has, at any time since the fifth day of April, nineteen hundred and twenty-two, been able, without the consent of any other person by means of the exercise of any power of appointment, power of revocation or otherwise howsoever by virtue or in consequence of a disposition made directly or indirectly by himself, to obtain for himself the beneficial enjoyment; or

(b) which by virtue or in consequence of any disposition made, directly or indirectly, by any person after the first day of May, nineteen hundred and twenty-two (other than a disposition made for valuable and sufficient consideration), is payable to or applicable for the benefit of any other person for a period which cannot exceed six years; or

(c) which by virtue or in consequence of any disposition made, directly or indirectly, by any person after the fifth day of April, nineteen hundred and fourteen, is payable to or applicable for the benefit of a child of that person for some period less than the life of the child;

shall, subject to the provisions of this section, but in cases under the above paragraph (c) only if and so long as the child is an infant and unmarried, be deemed for the purposes of the enactments relating to income tax (including super-tax) to be the income of the person who is or was able to obtain the beneficial enjoyment thereof, or of the person, if living, by whom the disposition was made, as the case may be, and not to be for those purposes the income of any other person:

Provided that in cases under the above paragraph (a)—

(i) where any such power as aforesaid can be exercised by a person with the consent of the wife or the husband of that person, the power shall, for the purposes of the said paragraph, be deemed to be exerciseable without the consent of another person, except where the husband and wife are living apart either by agreement or under an order of a court of competent jurisdiction; and

(ii) where any such power as aforesaid is exerciseable by the wife or the husband of the person who made the disposition, the power shall, for the purposes of the said paragraph,

be deemed to be exerciseable by the person who made the disposition.

Provided also that—

(i) the above paragraph (c) shall not apply as regards any income which is derived from capital which, at the end of the period during which that income is payable to or applicable for the benefit of the child, is required by the disposition to be held on trust absolutely for, or to be transferred to, the child, or any income which is payable to or applicable for the benefit of a child during the whole period of the life of the person by whom the disposition was made; and

(ii) for the purposes of the said paragraph (c) income shall not be deemed to be payable to or applicable for the benefit of a child for some period less than its life by reason only that the disposition contains a provision for the payment to some other person of the income in the event of the bankruptcy of the child, or of an assignment thereof, or a charge thereon being executed by the child.

(2) Where by virtue of paragraph (b) or paragraph (c) of subsection (1) of this section any income tax or super-tax becomes chargeable on and is paid by the person by whom the disposition was made, that person shall be entitled to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition the amount of the tax so paid, and for that purpose to require the Commissioners concerned to furnish to him a certificate specifying the amount of the income in respect of which he has so paid tax and the amount of the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

(3) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which he would but for the provisions of paragraph (b) or paragraph (c) of subsection (1) of this section have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the disposition, or where there are two or more such persons shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this sub-section, that question shall be decided by the General Commissioners whose decision thereon shall be final.

(4) Any income, which is deemed by virtue of this section to be the income of any person, shall be deemed to be the highest part of his income.

(5) In this section, unless the context otherwise requires—

The expression "child" includes step-child or illegitimate child;

The expression "disposition" includes any trust, covenant, agreement or arrangement.

21. With a view to preventing the avoidance of the payment of super-tax through the withholding from distribution of income of a company which would otherwise be distributed, it is hereby enacted as follows:—

(1) Where it appears to the Special Commissioners that any company to which this section applies has not, within a reasonable time after the end of any year or other period ending on any date subsequent to the fifth day of April, nineteen hundred and twenty-two, for which accounts have been made up, distributed to its members in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax, a reasonable part of its actual income from all sources for the said year or other period, the Commissioners may, by notice in writing to the company, direct that for purposes of assessment to super-tax, the said income of the company shall, for the year or other period specified in the notice, be deemed to be the income of the members, and the amount thereof shall be apportioned among the members, *and super-tax shall be assessed and charged under the provisions of this section in respect of the sum so apportioned after deducting in the case of each member any amount which has been distributed to him by the company in respect of the said year or period in such manner that the amount distributed falls to be included in the statement of total income to be made by that member for the purposes of super-tax* (*s*).

Provided that, in determining whether any company has or has not distributed a reasonable part of its income as aforesaid, the Commissioners shall have regard not only to the current requirements of the company's business, but also to such other requirements as may be necessary or advisable for the maintenance and development of that business.

For (*t*) the purpose of this subsection any such sum as is hereinafter described shall be regarded as income available for distribution among the members of the company and not as having been applied or being applicable to the current requirements of the company's business or to such other requirements as may be necessary or advisable for the maintenance and development of that business, that is to say:—

(a) Any sum expended or applied, or intended to be expended or applied, out of the income of the company, otherwise than in pursuance of an obligation entered into by the company before the fourth day of August, nineteen hundred and fourteen—

(i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking or property of a substantial character in fact acquired by the company; or

(ii) in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital

(*s*) Words in *italics* added by Finance Act, 1927, s. 31 (2); see also Act of 1928, s. 18.

(*t*) The following paragraph is added by sect. 31 (1) of the Finance Act, 1927, which also contains the proviso here printed at the end of the new paragraph.

or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor; or

(iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property:

(b) Any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transaction:

Provided that the . . . foregoing . . . paragraph shall not operate so as to make [this] section apply as respects any company unless it appears to the Special Commissioners, not only that income of the company has been or is to be expended or applied for one or more of the purposes mentioned in the said paragraph, but also that the company has not in fact distributed a reasonable part of its actual income in such a manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax.

(2) Any super-tax chargeable under this section in respect of the amount of the income of the company apportioned to any member of the company, shall be assessed upon that member in the name of the company, and, subject as hereinafter provided, shall be payable by the company, and all the provisions of the Income Tax Acts and any regulations made thereunder relating to super-tax assessments and the collection and recovery of super-tax shall, with any necessary modification, apply to super-tax assessments and to the collection and recovery of super-tax charged under this section.

(3) A notice of charge to super-tax under this section shall in the first instance be served on the member of the company on whom the tax is assessed, and if that member does not within twenty-eight days from the date of the notice elect to pay the tax a notice of charge shall be served on the company and the tax shall thereupon become payable by the company:

Provided that nothing in this subsection shall prejudice the right to recover from the company the super-tax charged in respect of any member who has elected as aforesaid but who fails to pay the tax by the first day of January in *the year next following* (*u*) the year of assessment or within twenty-eight days of the date on which he so elected, whichever is later.

(4) Any undistributed income which has been assessed and charged to super-tax under this section shall, when subsequently distributed, be deemed not to form part of the total income from all sources for the purposes of super-tax of any individual entitled thereto.

Where a member of a company has been assessed to and has paid

(*u*) Words inserted, "so far as relates to sur-tax," by Act of 1927, 5th Sched. Part III.

super-tax otherwise than under this section in respect of any income which has also been assessed and upon which super-tax has been paid under this section, he shall, on proof to the satisfaction of the special commissioners of the double assessment, be entitled to repayment of so much of the super-tax so paid by him as was attributable to the inclusion in his total income from all sources of the first-mentioned income.

(5) Where super-tax is charged under this section in respect of the income of a company for any year or other period, the Commissioners of Inland Revenue shall, on a certificate from the special commissioners that the super-tax has been accounted for, repay to the company the amount of any corporation profits tax paid by the company in respect of the corresponding accounting period or part thereof.

(6) *This section shall apply to any company which is under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested.*

For the purpose of this subsection—

A company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this section apply, or of two or more companies none of which is a company to which those provisions apply;

A company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year or other period for which the accounts of the company have been made up as aforesaid beneficially held by, the public (not including a company to which the provisions of this section apply) and any such shares have in the course of such year or other period been the subject of dealings on a stock exchange in the United Kingdom and the shares have been quoted in the official list of such a stock exchange.

The expression "company" means a company within the meaning of the Companies (Consolidation) Act, 1908 (*x*).

A company shall be deemed to be under the control of any person where the majority of the voting power or shares is in the hands of those persons or relatives or nominees of those persons, or where the control is by any other means whatever in the hands of those persons;

The expression "relative" means a husband or wife, ancestor, or lineal descendant, brother or sister;

(*x*) Words in *italics* substituted by Finance Act, 1927, s. 31 (3).

The expression "nominee" means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person;

Persons in partnership and persons interested in the estate of a deceased person or in property held on a trust shall, respectively, be deemed to be a single person.

(7) In this section the expression "member" shall include any person having a share or interest in the capital or profits or income of a company, and the expression "employee" shall not include any governing director, managing director, or director.

(8) The provisions contained in the First Schedule to this Act shall have effect as to the computation of the actual income from all sources of the company, the apportionment thereof amongst members of the company, and otherwise for the purpose of carrying into effect, and in connection with, this section.

(9) The provisions of this section shall apply for the purposes of assessment to super-tax for the year 1923-24 and any succeeding year of assessment (*y*).

22.—(1) The special commissioners may, whether an assessment to super-tax has been made or not, require any individual who has been required to make a return of his total income for the purposes of super-tax to furnish to them within such time as they may prescribe, not being less than twenty-eight days, such particulars as to the several sources of his income and the amount arising from each source, and as to the nature and the amount of any deductions claimed to be allowed therefrom, as they consider necessary.

(2) If any person without reasonable excuse fails to furnish within the time prescribed any particulars required under this section, he shall be liable to a penalty not exceeding fifty pounds, and after judgment has been given for that penalty to a further penalty of the like amount for every day during which the failure continues.

23.—(1) The definition of the expression "assessable value" in Schedule B of the Income Tax Act, 1918, shall have effect as though for the words "an amount equal to twice the annual value" there were substituted the words "an amount equal to the annual value," and as though for the words "an amount equal to the annual value" there were substituted the words "an amount equal to one-third of the annual value."

(2) In paragraph (a) of Rule 7 of the rules applicable to Schedule B there shall be substituted for the words "a year" the words "ten years."

24. (*Repealed, Act of* 1923, *s.* 39 (4) *and Schedule.*)

(*y*) As amended by sect. 31 of the Act of 1927, the section applies for the first time for the purposes of assessment to super-tax for the year 1928-9, see sect. 37. Provisions applicable in cases of winding-up, &c., are enacted in sub-sects (4), (5) and (6) of sect. 31 of the Act of 1927, which see.

25.—(1) The following paragraphs shall be substituted for paragraph (3) of Rule 8 of No. V. in Schedule A (which grants relief in certain cases in respect of the cost of maintenance, repairs, &c.) (*z*).

(2) This section shall not have effect as respects income tax for the year 1922-23.

26.—(1) Where for any year of assessment rights to work minerals in the United Kingdom are let, the lessor shall be entitled on making a claim for the purpose to be repaid so much of the income tax paid by him by deduction or otherwise in respect of the rent or royalties for that year as is equal to the amount of the tax on any sums proved to the satisfaction of the special commissioners to have been wholly, exclusively, and necessarily disbursed by him as expenses of management or supervision of those minerals in that year:

Provided that no repayment of tax shall be made—

(a) except on proof to the satisfaction of the special commissioners of payment of tax on the aggregate amount of the rent or royalties; or

(b) if, or to such extent as, the said expenses have been otherwise allowed as a deduction in computing income for the purposes of income tax.

(2) The provisions of subsection (2) of section thirty-three of the Income Tax Act, 1918, shall apply to claims under this section.

27. Allowances granted by the Minister of Pensions under a Royal Warrant, Order in Council, or order administered by him to widows of members of the naval, military, or air forces of the Crown in respect of their children shall not be reckoned in computing the income of such widows for any of the purposes of the Income Tax Acts.

28.—(1) Subsection (1) of section forty-seven of the Income Tax Act, 1918, which, as amended by section seven of the Savings Bank Act, 1920, grants relief from income tax in respect of any national savings certificates issued by the Treasury through the Post Office under which the purchaser, by virtue of an immediate payment of fifteen shillings and sixpence, becomes entitled after five years to receive the sum of one pound, shall apply to any such certificates so issued whether the price of issue of the certificates is fifteen shillings and sixpence or any other sum and whether the certificates mature for payment on the expiration of five years or any other period.

(2) All enactments giving relief from income tax in respect of the accumulated interest payable in respect of national savings certificates shall extend to the accumulated interest payable in respect of any Ulster savings certificates issued by the Government of Northern Ireland and held by persons resident and domiciled in Northern Ireland, whether issued for the same price and whether maturing for payment on the expiration of the same period as national savings certificates or not.

29. In the computation of any profits or income for the purposes of assessment to income tax no deduction shall be allowed in respect

(*z*) These paragraphs will be found set out *supra*, p. 482.

of any interest paid on arrears of excess profits duty or munitions exchequer payments.

30.—(1) Where a charity is entitled to the residuary estate of any testator and the residue or some part thereof is not paid to the charity until after the expiration of one year after the death of the testator, there shall be treated as being income of the charity for the purposes of the Income Tax Acts such portion of the income, if any, which accrued to the estate in respect of the period between the expiration of the said year and the date of payment as would have accrued to the charity if the residue, or the said part of the residue, had been paid to the charity immediately after the expiration of the said year and the assets constituting the estate (excluding any part thereof specifically bequeathed or devised) on that date had then been apportioned rateably as between the creditors, legatees (other than specific legatees), and persons entitled to the residue.

(2) If any question arises as to the amount which ought by virtue of this section to be treated as being income of a charity or as to the amount of income tax which has been paid or borne in respect of any income which is by virtue of this section treated as being income of a charity, the special commissioners shall hear and determine the case in like manner as if it were an appeal to them against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(3) In this section the expression "charity" means any body of persons or trust established for charitable purposes only, and references to the residuary estate of a testator include references to a share of residuary estate.

31.—(1) Where, in pursuance of any public general Act of Parliament, superannuation allowances or gratuities are payable to individuals holding an office or employment on their retirement or to their legal personal representatives on their death, and such individuals are by any such Act required to make contributions towards the expenses of providing the allowances and gratuities, the sums so contributed by any such individual for any year may be deducted from the amount of his emoluments to be assessed to income tax for that year:

Provided that, where any such sums are to be repaid to any individual under the authority of any such Act as aforesaid, the person by or through whom the sums are to be repaid shall deduct from those sums an amount equal to the total amount of the income tax which would have been paid in respect of those sums if they had not been allowed as deductions under the authority of this section, and if those sums are repaid with any interest thereon, shall also deduct therefrom an amount equal to the total amount of the income tax which would have been paid in respect of that interest if it had actually been paid to the individual in the several years in respect of which it is paid, and the provi-

sions of paragraph (2) of rule twenty-one of the General Rules shall apply in regard to the accounting for and recovery of the amounts so deducted.

(2) Any person having the custody of the books containing the assessments to income tax on any individual for the several years in respect of which sums are repayable to him as aforesaid shall, notwithstanding anything contained in any declaration made by that person in pursuance of section eighty-nine of the Income Tax Act, 1918, on application by the person by or through whom the sums are repayable, furnish to him such particulars as may be necessary to enable him to compute the appropriate amount of income tax to be deducted and paid over by him as aforesaid.

32.—(1) The provisions of this section shall have effect for the purpose of enabling the annual values of properties for the purposes of assessments to income tax under No. I. and No. II. of Schedule A . . . for the year 1923-24 (in this Act referred to as "the said annual values"), to be determined during the year 1922-23, and of enabling the said assessments for the year 1923-24 to be made as soon as may be after the commencement of that year, and for that purpose all things necessary to be done for determining the said annual values, and all things preliminary to the making of any such assessments may be done, as well at any time after the commencement of this Act and before the sixth day of April, nineteen hundred and twenty-three, as at any time after the last-mentioned date.

(2) For the purposes aforesaid, the provisions set out in the Second Schedule to this Act shall have effect.

(3) The assessments to income tax under No. I. and No. II. of Schedule A . . . for the year 1923-24 shall be made by the general commissioners on the basis of the annual values determined under this section for the year 1922-23.

Provided that any person, who proves to the satisfaction of the general commissioners that the annual value for the year 1923-24 of any land, tenement, hereditament, or heritage, or of any inhabited dwelling-house, in respect of which he has been assessed for the year 1923-24 is less than the annual value on which the assessment was based shall be entitled to a reduction of the assessment to an amount based on the annual value for the year 1923-24, estimated in accordance with the rules applicable to assessments under No. I. or No. II. of Schedule A or the enactments relating to inhabited house duty, as the case may be.

(4) This section shall not apply as respects Scotland, or Ireland, or as respects lands, tenements or heritages in the Administrative County of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is by that Act made conclusive for the purposes of income tax and inhabited house duty, or to the appointment of assessors within the said county.

33. The parishes for which assessments of income tax and inhabited house duty are to be made for the year 1923-24, and for which assessors

and collectors are to be appointed for that year shall, in England (elsewhere than in the Administrative County of London), be the parishes as existing for the purposes of poor law administration at the commencement of this Act.

PART V.

. . . . . .

49. . . . .

(2) This Act may be cited as the Finance Act, 1922.

(3). Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(4) The enactments set out in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule, . . .

SCHEDULES.

FIRST SCHEDULE.

1. A company which is aggrieved by any direction given under section twenty-one of this Act may appeal to the special commissioners against the direction by giving notice of appeal to the Clerk to the Commissioners within twenty-one days after the date of the notice, and the Commissioners shall hear and determine the appeal, subject as herein provided, and the provisions of the Income Tax Acts relating to appeals against assessments shall, with any necessary modification, apply for the purposes of an appeal under this provision.

2. If either the company or the Commissioners of Inland Revenue are dissatisfied with the determination of the special commissioners on any appeal under the foregoing provisions of this schedule, they may, on giving notice to the Clerk to the special commissioners within twenty-one days after the determination, require the appeal to be reheard by the Board of Referees and the special commissioners shall transmit to the Board any document in their possession which was delivered to them for the purposes of the appeal.

The Board shall rehear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the special commissioners might have and exercise, and the determination of the Board thereon shall be final and conclusive:

Provided that section one hundred and forty-nine of the Income Tax Act, 1918 (which relates to the statement of a case on a point of law), shall apply with the necessary modifications in the case of any such rehearing and determination as it applies in the case of appeals to the general or special commissioners under the said Act.

3. The provisions of *subsection* (7) *of section forty-two of the Finance Act,* 1927 (*a*), relating to the representation of the Crown on super-tax

(*a*) Amendment made by Act of 1927, 5th Sched. Part III., "so far as relates to sur-tax."

appeals shall, with the necessary modifications, apply to any appeal under this schedule.

4. The special commissioners may, at any time by notice in writing, require any company which appears to them to be a company to which section twenty-one of this Act applies, to furnish them with—

(a) a statement of the actual income of the company from all sources, together with a copy of the company's accounts for any year or other period for which the company's accounts have been made up and such particulars as the commissioners may reasonably require as to the income of the company and the manner in which the income has been dealt with; and

(b) a statement for the same period of the names and addresses and particulars of the respective interests of all members of the company.

5.—(a) Where the special commissioners have—

(i) issued a notice requiring any company to furnish them with particulars under paragraph 4 of this schedule as respects any year or other period; or

(ii) given a direction under subsection (1) of section twenty-one of this Act as respects any year or other period in relation to any company to which no such notice has been issued as respects that year or period;

the directors of the company, if they are of opinion that there has not been and will not be any avoidance of the payment of super-tax through failure to distribute to the members of the company a reasonable part of its income for that year or period, may make a statutory declaration to that effect stating the facts and circumstances upon which their opinion is based;

(b) In any case where such a statutory declaration as aforesaid is sent to the special commissioners within twenty-eight days of the issue of such a notice or the giving of such a direction as aforesaid the special commissioners shall not, unless they see reason to the contrary, take any further action in the matter;

(c) If in any such case the commissioners see reason to the contrary they shall send to the Board of Referees a certificate to that effect, together with the said statutory declaration, and shall at the same time transmit a copy of the certificate and of the statutory declaration to the Commissioners of Inland Revenue;

(d) The Commissioners of Inland Revenue may at any time within twenty-eight days after receiving the copy of the certificate and the copy of the statutory declaration submit to the Board of Referees a counter-statement with reference to the matter;

(e) The Board of Referees shall in any such case take into consideration the declaration, and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a *primâ facie* case for proceeding in the matter;

(f) The determination of the Board of Referees under this paragraph shall be final and conclusive, and, where the Board of Referees determines that there is a *primâ facie* case for proceeding, the notice or direction aforesaid shall have effect as if it had been issued or given on the date on which notice of the determination of the Board is given to the company (*b*).

6. In computing the actual income from all sources of a company for any year or period, the income from any source shall be estimated in accordance with the provisions of the Income Tax Acts relating to the computation of income from that source; except that the income shall be computed by reference to the income for such year or period as aforesaid and not according to an average of more than one year or by reference to any year or period other than such year or period as aforesaid.

7. If any company fails or refuses on being so required in accordance with the provisions of this schedule to furnish a statement of actual income from all sources or renders a statement with which the special commissioners are not satisfied, the commissioners may make an estimate of that income to the best of their judgment.

8. The apportionment of the actual income from all sources of the company shall be made by the special commissioners in accordance with the respective interests of the members, and the income as apportioned to each member *so far as assessable and chargeable to super-tax under section twenty-one of this Act* (*c*) shall, for the purposes of super-tax, be deemed to represent . . . (*c*) income from his interest in the company for the year or other period and shall be included in the statement of his total income or in an amended statement of total income which the special commissioners are hereby authorised to require and shall be deemed to be the highest part of that income.

9. The income apportioned to a member of a company so far as assessable and chargeable to super-tax under section twenty-one of this Act shall for the purposes of that tax be deemed to have been received by him on the date to which the accounts of the company for the year or period were made up or, if an application in that behalf is made by the company to the special commissioners at any time within the period limited by this Schedule for giving notice of appeal against the direction to the special commissioners, on such date as those commissioners determine to be just, having regard to the dates on which distributions of income have been made by the company, and so as to avoid, as far as possible, the inclusion for the purposes of super-tax for any year of income referable to more than one year (*d*).

10. Notice of any apportionment made by the special commissioners shall be given by serving on the company a statement showing the

(*b*) Paras. 5 and 9 are here printed as substituted by sect. 31 (7) and (8) of the Act of 1927.

(*c*) Amendments made by Act of 1927, 5th Sched. Part III.

(*d*) Paras. 5 and 9 are here printed, as substituted by sect. 31 (7) and (8) of the Act of 1927.

amount of the actual income from all sources adopted by them for the purposes of section twenty-one of this Act, and either the amount apportioned to each member or the amount apportioned to each class of shares, as they think fit.

A company which is aggrieved by any notice of apportionment shall be entitled to appeal to the special commissioner on giving notice to their clerk within twenty-one days after the date of the notice, and those commissioners shall hear and determine the appeal and all the provisions of the Income Tax Acts and any regulations made thereunder relating to appeals against assessments and to cases to be stated for the opinion of the High Court shall, with any necessary modification, apply for the purposes of any such appeal.

11. Any person in whose name any shares of a company are registered shall, if required by notice in writing by the special commissioners, state whether or not he is the beneficial owner of those shares, and if not the beneficial owner of those shares or any of them shall furnish the name and address of the person or persons on whose behalf the shares are registered in his name.

If any person on being so required neglects or fails to comply with the notice within the time limited by the notice, he shall be liable to a penalty of twice the amount of super-tax that would be chargeable at the highest rate in respect of the amount of the income apportioned to such shares.

12. In this schedule the expression "Board of Referees" means the Board of Referees for the purposes of Rule 6 of the rules applicable to Cases I. and II. of Schedule D.

SECOND SCHEDULE.

Procedure in connection with the Determination of Annual Values for the purposes of Income Tax under Schedule A and Inhabited House Duty for 1923-24.

(1) The general commissioners shall, not later than thirty days after the commencement of this Act, appoint persons to be assessors of income tax chargeable under Schedules A and B and of inhabited house duty for the year 1923-24, issue the necessary instructions to the assessors so appointed, and appoint a day not later than the thirtieth day of November, nineteen hundred and twenty-two, for the assessors so appointed to appear before them and bring in certificates of their assessments of the said annual values.

(2) General and particular notices shall be issued requiring the statements containing the particulars prescribed by the Income Tax Acts, and the provisions of the Income Tax Acts relating to notices to deliver, the delivery of, and penalties for neglecting to deliver statements and declarations shall apply.

(3) The statements so to be prepared and delivered shall contain particulars relative to the year 1922-23, and the said annual values shall be estimated and determined as for the year 1922-23.

(4) The provisions of sections one hundred and twenty and one hundred and twenty-five of the Income Tax Act, 1918, and of section fifty-two (as amended by sub-section (2) of section twenty-three of the Finance Act, 1907), and section fifty-six of the Taxes Management Act, 1880, shall, with the necessary modifications, apply with regard to the annual values to be estimated and determined in accordance with the foregoing provisions, and the general commissioners shall cause notice of such assessments of annual values to be given.

(5) The provisions of subsections (1) and (2) of section one hundred and thirty-four of the Income Tax Act, 1918, and the provisions of the Income Tax Acts relating to appeals against assessments to income tax under Schedule A shall, with the necessary modifications, apply to notices to be given and to appeals in respect of annual values assessed under the foregoing provisions for the purposes of income tax under Schedule A; and the relevant provisions of the Acts relating to inhabited house duty shall apply to notices to be given and to appeals in respect of annual values so assessed for the purposes of that duty.

THE FINANCE ACT, 1923.

(13 & 14 Geo. 5, c. 14.)

[18th July, 1923.]

Part II.—Income Tax.

. . . . . .

16.—(1) Where the profits of an assurance company in respect of its life assurance business are for the purposes of the Income Tax Acts computed in accordance with the rules applicable to Case I. of Schedule D, such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy-holders or annuitants shall be excluded in making the computation, but if any profits so excluded as being reserved for policy-holders or annuitants cease at any time to be so reserved and are not allocated to or expended on behalf of policy-holders or annuitants, those profits shall be treated as profits of the company for the year in which they ceased to be so reserved.

(2) Where an assurance company carrying on the business of life assurance claims repayment under section thirty-three of the Income Tax Act, 1918, in respect of sums disbursed as expenses of management there shall, in addition to the amount directed by proviso (b) of sub-section (1) of the said section to be deducted from the amount treated as expenses of management, be deducted therefrom the amount of any profits arising from the granting of annuities on human life.

For the purposes of this subsection profits arising from the granting

of annuities on human life shall be computed in accordance with the rules applicable to Case I. of Schedule D:

Provided that in making any such computation—

(a) The provisions of subsection (1) of this section shall apply with the necessary modifications and in particular with the omission therefrom of all references to policy-holders; and

(b) No deduction shall be allowed in respect of any expenses of management in respect of which repayment of tax may be claimed under the said section thirty-three; and

(c) There may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen in connection with the granting of annuities on human life in any previous year during which this section was in operation.

(3) Where an assurance company carries on both ordinary life assurance business and industrial life assurance business, the business of each such class shall for the purposes of the Income Tax Acts be treated as though it were a separate business, and section thirty-three of the Income Tax Act, 1918, shall apply separately to each such class of business.

(4) For the purpose of removing doubts it is hereby declared that a mutual assurance company carrying on life assurance business is entitled to relief under section thirty-three of the Income Tax Act, 1918, in the same manner and to the same extent as if the business of the company were the business of a proprietary assurance company, and the provisions of this section shall be construed accordingly.

17.—(1) Where any emoluments, pension or annuity are or is payable in Great Britain or Northern Ireland, by or through any public department, officer, or agent of the Government of any part of His Majesty's Dominions, including any territory under His Majesty's protection, but otherwise than out of the public revenue of Great Britain and Northern Ireland or the public revenue of Northern Ireland, to a person who is or has been employed in the service of the Crown outside Great Britain and Northern Ireland in respect of that service, or any pension or annuity is so payable to the widow, child, relative or dependant of any such person as aforesaid, and the person in receipt of the emoluments, pension or annuity is chargeable to income tax as a person resident in Great Britain or Northern Ireland, the emoluments, pension or annuity shall be chargeable to income tax under Schedule E, and the provisions of the Income Tax Acts relating to the deduction, assessment, and collection of tax in respect of official pay payable at a public office shall apply accordingly with any necessary modifications.

(2) Any deduction on account of income tax made at any time before the passing of this Act which would have been properly made if this section had been in force at the date of the making of the deduction and had referred to the United Kingdom instead of to Great Britain and

Northern Ireland or Great Britain or Northern Ireland, shall be deemed to have been properly made under Schedule E.

18.—(1) If His Majesty in Council is pleased to declare—

(a) that any profits or gains arising from the business of shipping which are chargeable to British income tax are also chargeable to income tax payable under the law in force in any foreign state (*u*); and

(b) that arrangements, as specified in the declaration, have been made with the government of that foreign state (*u*) with a view to the granting of relief in cases where such profits and gains are chargeable both to British income tax and to the income tax payable in the foreign (*u*) state;

then, unless and until the declaration is revoked by His Majesty in Council, the arrangements specified therein shall, so far as they relate to the relief to be granted from British income tax, have effect as if enacted in this Act, but only if and so long as the arrangements, so far as they relate to the relief to be granted from the income tax payable in the foreign state (*u*), have the effect of law in the foreign state (*u*).

(2) Any declaration made by His Majesty in Council under this section shall be laid before the Commons House of Parliament as soon as may be after it is made, and, if an address is presented to His Majesty by that House within twenty-one days on which that House has sat next after the declaration is laid before it praying that the declaration may be revoked, His Majesty in Council may revoke the declaration, and the arrangements specified in the declaration shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of a new declaration.

(3) The obligation as to secrecy imposed by any enactment with regard to income tax shall not prevent the disclosure to any authorised officer of the foreign state (*u*) mentioned in the declaration of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

(4) In this section the expression "business of shipping" means the business carried on by an owner of ships, and for the purposes of this definition the expression "owner" includes any charterer.

19.—(1) Subject to the provisions of this section, income arising from any office or employment to which this section applies shall be exempt from income tax (including super-tax), and no account shall be taken of any such income in estimating the amount of income for any of the purposes of the Income Tax Acts for the year 1923-24 or any succeeding year of assessment.

(*u*) Extended to British Dominions, and protected and mandate territories: Act of 1924, s. 31.

(2) The offices and employments to which this section applies are the following, that is to say:—

The office of High Commissioner and the office of Agent-General:

The employment in Great Britain or Northern Ireland as a member of the personal staff of any High Commissioner or Agent-General, or as an official agent for British India or any self-governing dominion, for any state or province of a self-governing dominion, or for any self-governing colony of a person certified by the High Commissioner or Agent-General, as the case may be, to be ordinarily resident outside Great Britain and Northern Ireland and to be resident in Great Britain or Northern Ireland solely for the purpose of the performance of his duties as such member or official agent.

(3) Nothing in this section shall operate to grant relief from income tax (including super-tax) in respect of income arising from the employment of any person in any trade, business, or other undertaking carried on for the purposes of profit.

(4) In this section—

The expression "High Commissioner" means the High Commissioner for British India or for any of the self-governing dominions;

The expression "Agent-General" means the Agent-General for any state or province of a self-governing dominion or for any self-governing colony;

The expression "self-governing dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State or Newfoundland;

The expression "self-governing colony" means any colony certified by a Secretary of State to be a self-governing colony.

20.—(1) (*Relief from super-tax in respect of establishment of Irish Free State*) (*x*).

21. Subject as hereinafter provided, section thirty-seven of the Income Tax Act, 1918 (which grants exemption in respect of charities), shall, in the case of rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school, or almshouse in the Irish Free State, or vested in trustees in the Irish Free State for charitable purposes, and in the case of a body of persons or trust established in the Irish Free State for charitable purposes only, and in the case of income which according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will in the Irish Free State, is applicable to charitable purposes only, or which, in the names of trustees in the Irish Free State, is applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, apply,

(*x*) Repealed, Act of 1924, s. 41 (4), and 3rd Sched.

as respects income tax chargeable for the year 1923-24 (*y*), as if the Irish Free State had not been constituted:

Provided that this section shall not apply except where the lands, tenements, hereditaments, or heritages belonged to the hospital, public school, or almshouse, or were vested in the trustees, on the fifth day of April, nineteen hundred and twenty-three, or the interest, annuities, dividends, shares of annuities, yearly interest or other annual payment arise from investments which were held by the body of persons, trust, or trustees, or were subject to rules or regulations as aforesaid, on the fifth day of April, nineteen hundred and twenty-three.

22. (*Exemption of certain funds in Irish Free State*) (*z*).

23.—(1) Proceedings for the recovery of any fine or penalty incurred under the Income Tax Acts in connection with or in relation to the income tax (including super-tax) charged for the year 1920-21 or any subsequent year of assessment may be commenced at any time within six years next after the date on which it was incurred.

(2) The amount of the penalty which may be recovered in proceedings in any court under section one hundred and seven of the Income Tax Act, 1918 (which imposes penalties for neglect to deliver lists, declarations, and statements), shall be a sum of twenty pounds and treble the amount of the tax with which the offender ought to be charged under that Act instead of a sum of fifty pounds.

(3) The amount of the penalty recoverable under subsection (2) of section one hundred and thirty-two of the Income Tax Act, 1918 (which imposes a penalty on a person who aids, abets, assists, incites, or induces another person to make or deliver a false or fraudulent account, statement, or declaration), or under subsection (2) of section thirty of that Act (which imposes a penalty on a person who aids or abets any person in committing an offence under that section), shall be increased to five hundred pounds.

24.—(1) If any person who has paid tax charged under an assessment to income tax made for any year under Schedule D, or according to the rules applicable to that schedule, alleges that the assessment was excessive by reason of some error or mistake in the return or statement made by him for the purposes of the assessment, he may, at any time not later than *six* (*a*) years after the end of the year of assessment within which the assessment was made, make an application in writing to the Commissioners of Inland Revenue for relief.

(2) On receiving any such application the Commissioners of Inland Revenue shall inquire into the matter and shall, subject to the provisions of this section, give by way of repayment such relief (including

(*y*) Continued to end of 1927—28, Act of 1924, s. 33; Act of 1925, s. 18.

(*z*) Repealed, Act of 1924, s. 41 (4), and 3rd Sched.

(*a*) Extended to six years by Act of 1926, s. 27. The section is applied to sur-tax by Act of 1927, s. 42 (3), and to tax under Sched. E by sect. 45 (8).

any consequential relief from super-tax) in respect of the error or mistake as is reasonable and just:

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return or statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when the return or statement was made.

(3) In determining any application under this section the Commissioners of Inland Revenue shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to income tax or super-tax of any part of the profits or income of the applicant, and for this purpose the Commissioners may take into consideration the liability of the applicant and assessments made on him in respect of other years.

(4) Any person who is aggrieved by the determination of the Commissioners of Inland Revenue on an application made by him under this section may, on giving notice in writing to those Commissioners within twenty-one days after the notification to him of their determination, appeal to the special commissioners.

(5) The special commissioners shall thereupon hear and determine the appeal in accordance with the principles to be followed by the Commissioners of Inland Revenue in determining applications under this section and, subject thereto, in like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications:

Provided that neither the appellant nor the Commissioners of Inland Revenue shall be entitled to require a case to be stated for the opinion of the High Court otherwise than on a point of law arising in connection with the computation of profits or income.

25. Paragraph (a) of subsection (3) of section one hundred and thirty-seven of the Income Tax Act, 1918, shall be read and construed as if for the word "may" wherever the same occurs therein were substituted the word "shall" and as if for the words "or may" there were substituted the words "and shall."

26.—(1) Where by virtue of any enactment the annual value of any property which has been adopted for the purpose either of income tax under Schedule A, or of income tax under Schedule B, or of inhabited house duty for any year is to be taken as the annual value of that property for the same purpose for any subsequent year, any occupier of any property, or any owner or other person in receipt of the rent of any property, who is aggrieved by the amount so to be taken as the annual value of the property shall be entitled to appeal to the general commissioners against an assessment to income tax under

Schedule A or under Schedule B, or to inhabited house duty in respect of that property for that subsequent year, and the general commissioners shall hear and determine the appeal and confirm or amend the assessment, as the case may require, in the same manner as if the annual value of the property so to be taken were the annual value determined for that subsequent year, in accordance with the provisions of the Income Tax Acts or of the Acts relating to inhabited house duty, as the case may be.

(2) On any appeal against an assessment of annual value for the purposes of income tax under Schedule A or of inhabited house duty, or against an assessment to income tax under Schedule A, or under Schedule B, or to inhabited house duty, the general commissioners shall permit any agent appointed by the appellant to plead before them on his behalf.

27. (*Appeal in respect of Schedule A assessments for* 1923-24) (*a*).

28.—(1) The following paragraphs shall be substituted for paragraphs (i) and (ii) of paragraph (1) (b) of Rule 7 of No. V. in Schedule A (which relates to the allowance for repairs) (*b*):—

(2) The following paragraph shall be inserted at the end of the said Rule 7 (*c*):—

(3) Paragraph (2) of the said Rule 7 shall have effect as if after the words "one-eighth" there were inserted the words "below the rent" and as if for the words "is more than one-sixth below the rent" there were substituted the words "is less than the rent by a sum greater than the authorised reduction which would be allowable if the assessment were on the amount of the rent," and in paragraph (1) of Rule 8 of the said No. V. in Schedule A for the reference to one-sixth part of the value there shall be substituted a reference to the authorised reduction.

(4) Nothing in this section shall affect the validity of any notice of assessment of annual value under section thirty-two of the Finance Act, 1922, given before the commencement of this Act, but the occupier of any property, or the owner or other person in receipt of the rent of any property, who is aggrieved by the amount by which the assessment has been reduced for the purposes of collection under the provisions of Rule 7 of No. V. in Schedule A, as amended by this section, shall be entitled to appeal on the matter if he gives to the surveyor, not later than the fifth day of April, nineteen hundred and twenty-five, notice in writing of his intention to appeal, and on any such appeal the commissioners shall make such amendment (if any) in relation to the reduction as the case may require, and the provisions of the Income Tax Acts relating to appeals against assessments to income tax under Schedule A shall, with any necessary modifications, apply to appeals under this subsection:

(*a*) Repealed, Act of 1924, s. 41 (4), and 3rd Sched.
(*b*) These will be found set out *supra*, p. 480.
(*c*) Set out *supra*, p. 481.

Provided that nothing in this subsection shall affect the collection or recovery of any tax assessed and charged, and where the amount of any reduction is increased on an appeal under this subsection any tax overpaid shall be repaid.

(5) . . . . (*d*).

29.—(1) Subject to the provisions of this section an assessment, an additional first assessment or a surcharge in respect of income tax chargeable for the year 1920-21 or any subsequent year of assessment may be amended or made, as the case may be, under section one hundred and twenty-five of the Income Tax Act, 1918, or section one hundred and twenty-six of that Act, at any time not later than six years after the end of the year to which the assessment relates or the year for which the person liable to income tax ought to have been charged.

(2) . . . . (*e*).

(3) For the purposes of the charge of income tax or super-tax on the executors or administrators of a deceased person in respect of the profits or gains or income which arose or accrued to him before his death, the time allowed by the foregoing provisions of this section shall not extend beyond the end of the third year next following the year of assessment in which the deceased person died.

30.—(1) Section forty-one of the Income Tax Act, 1918, and Rule 5 of No. V. of Schedule A (which fix the period within which certain claims for repayment of income tax may be made) shall, so far as relates to claims for repayment in respect of income tax charged for the year 1920-21 or for any subsequent year of assessment, have effect as though a period of six years after the expiration of the year of assessment were substituted for a period of three years after the expiration of the year of assessment.

(2) Section twenty-five of the Income Tax Act, 1918 (which grants relief from tax in respect of income accumulated under trusts) shall, in the case of such a contingency as is referred to in that section happening in the year 1920-21 or in any subsequent year of assessment, have effect as though a period of six years after the end of the year of assessment in which the contingency happens were substituted for a period of three years after the end of the year of assessment in which the contingency happens.

(3) Any provision of the Income Tax Acts which authorises a claim for repayment of income tax to be made at the end of any year of assessment or within a specified period of less than one year after the end of any year of assessment shall be amended so as to authorise the making of the claim within a period of one year after the end of the year of assessment.

31. (*Annual values for Schedule B for* 1923-24) (*f*).

(*d*) Repealed and the section continued in force to 5th April, 1933, Act of 1928, ss. 20 (1), 35, and 5th Sched.

(*e*) Repealed as from 6th April, 1929, Act of 1927, s. 47 and 6th Sched. Part I.

(*f*) Repealed, Act of 1924, s. 41 (4) and 3rd Sched.

PART IV.

39. . . .

Part II. of this Act shall be construed together with the Income Tax Acts and the Acts relating to inhabited house duty.

(2) This Act may be cited as the Finance Act, 1923.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(4) The enactments set out in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

THE FINANCE ACT, 1924.

(14 & 15 GEO. 5, c. 21.)

[1st August, 1924.]

PART II.—INCOME TAX.

. . . . . .

21. The amount of the deduction to be allowed under section nineteen of the Finance Act, 1920, as amended by this Act and under section twenty of the Finance Act, 1920 (which sections provide respectively for deductions from assessable income in respect of relatives taking charge of widowers' and widows' children or acting as housekeepers, and for such deductions in respect of widowed mothers, &c.), shall be increased from forty-five pounds to sixty pounds.

22.—(1) Section nineteen of the Finance Act, 1920 (which makes provision for a deduction in respect of relatives taking charge of widowers' or widows' children), shall be extended so as to apply to a person resident with a widower or widow in the capacity of housekeeper as it applies to a person resident with a widower or widow for the purpose of having the charge and care of children, and accordingly for subsection (1) of the said section from the beginning thereof down to the proviso there shall be substituted the following:— . . . (*a*).
and the following shall be added after proviso (b) to the said subsection:— . . . (*a*).

(2) References in any enactment to the said section nineteen shall be construed as references to the said section as amended by this section.

23.—(1) Any profits or gains arising to an agricultural society from an exhibition or show held for the purposes of the society shall, if they are applied solely to the purposes of the society, be exempt from income tax.

(2) The expression "agricultural society" in this section means any society or institution established for the purpose of promoting the interests of agriculture, horticulture, live-stock breeding or forestry.

(*a*) The enactments substituted and added will be found set out *supra*, p. 530.

24. Paragraph (ii) of the proviso to paragraph (b) of subsection (3) of section thirty-nine of the Income Tax Act, 1918 (which subsection provides for the exemption from tax of certain income of savings banks), shall have effect as though for the words . . . there were substituted the words . . . (*b*).

25. Rule 8 of No. V. in Schedule A shall have effect as if at the end of paragraph (2) thereof there were added the words . . . (*c*).

26. . . . . (*d*).

27.—(1) Any person who is aggrieved by the decision of the Commissioners of Inland Revenue on any question to which this section applies may, by notice in writing to that effect given to the Commissioners of Inland Revenue within three months from the date on which notice of the decision is given to him, make an application to have his claim for relief heard and determined by the special commissioners.

(2) Where any application is made under this section, the special commissioners shall hear and determine the claim in like manner as an appeal made to them against an assessment under Schedule D, and all the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(3) This section applies to the following questions:—

(a) any question as to ordinary residence arising under subsection (1) of section forty-six of the Income Tax Act, 1918:

(b) any question as to domicile or ordinary residence arising under paragraph (a) of Rule 2 of the Rules applicable to Case IV. of Schedule D, or under paragraph (a) of Rule 3 of the Rules applicable to Case V. of Schedule D:

(c) any question as to residence arising—

(i) under paragraph (d) of Rule 2 of the General Rules applicable to Schedule C; or

(ii) under Rule 7 of the Miscellaneous Rules applicable to Schedule D in connection with a claim for repayment of income tax made to the Commissioners of Inland Revenue by the person owning the stocks, funds, shares or securities and entitled to the income arising therefrom, or entitled to the annuities, pensions or other annual sums, as the case may be, and from whose income a deduction has been made on account of the income tax assessed and charged under the said Rule.

28. For the purposes of any assessment to income tax for any year which is made on or after, or has not become final and conclusive before, the thirtieth day of April, nineteen hundred and twenty-four, or of any

(*b*) The substituted words will be found set out *supra*, p. 419.

(*c*) The added words will be found set out *supra*, p. 481.

(*d*) Repealed, Act of 1926, s. 37 and 5th Sched. Part I.

deduction on account of income tax for any year, any increase of or addition to any salary, remuneration, pension, annuity or stipend by way of war bonus, and any other like temporary increase or addition granted in order to meet the rise in the cost of living, shall be, and shall be deemed always to have been, chargeable to tax as salary, remuneration, pension, annuity or stipend, as the case may be, and not as perquisites under Rule 4 of the Rules applicable to Schedule E or under the fourth of the Rules for charging the duties under Schedule E in section one hundred and forty-six of the Income Tax Act, 1842.

29. . . . . (*e*).

30.—(1) Where the amount of any income tax for the time being due and payable under any assessment is less than fifty pounds, the tax may, without prejudice to any other remedy and without prejudice to the provision for recovery of income tax assessed and charged quarterly, be recoverable summarily as a civil debt, and section twenty-nine of the Finance Act, 1921 (which relates to evidence of payment of wages in proceedings under subsection (2) of section one hundred and sixty-nine of the Income Tax Act, 1918, for the recovery of income tax), shall apply in the case of proceedings under this section as it applies in the case of proceedings under that section and as if references therein to wages included references to salaries, fees and other emoluments.

(2) Proceedings under this section shall be commenced in the name of a collector of taxes.

31. Section eighteen of the Finance Act, 1923 (which makes provision for the granting of relief in cases where profits arising from the business of shipping are chargeable both to British income tax and to income tax payable under the law in force in any foreign state), shall have effect as if references therein to a foreign state included references to any British Dominion, any territory which is under His Majesty's protection, and any territory in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

32. Section twenty-one of the Finance Act, 1923 (which grants an exemption for charities in the Irish Free State in respect of income tax for the year 1923-24), shall apply with respect to income tax chargeable for the year 1924-25 as it applied with respect to income tax chargeable for the year 1923-24.

33.—(1) Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, after the thirtieth day of November, nineteen hundred and twenty-four, in payment of any dividend or interest distributed by any company, being a company within the meaning of the Companies (Consolidation) Act, 1908, or a company created by letters patent or by or in pursuance of an Act of Parliament, shall have annexed thereto or be accompanied by a statement in writing showing—

(a) the gross amount which, after deduction of the income tax appro-

(*e*) Repealed, Act of 1927, s. 47 and 6th Sched. Part I.

priate thereto, corresponds to the net amount actually paid; and

(b) the rate and the amount of income tax appropriate to such gross amount; and

(c) the net amount actually paid.

(2) If a company fails to comply with the provisions of this section, the company shall, in respect of each offence, incur a penalty of ten pounds:

Provided that the aggregate amount of any penalties imposed under this section on any company in respect of offences connected with any one distribution of dividends or interest shall not exceed one hundred pounds.

PART III.

41. . . .

Part II. of this Act shall be construed together with the Income Tax Acts.

(2) This Act may be cited as the Finance Act, 1924.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(4) The enactments set out in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

THE FINANCE ACT, 1925.

(15 & 16 GEO. 5, c. 36.)

[30th June, 1925.]

PART II.—INCOME TAX.

. . . . . .

15 (*f*).—(1) An individual who makes in the manner prescribed by the Income Tax Acts a claim in that behalf and who makes a return in the prescribed form of his total income shall, for the purpose of ascertaining the amount of his assessable income for the purpose of income tax, be allowed a deduction from the amount of his earned income of a sum equal to one-sixth of the amount of that income, but not exceeding in the case of any individual two hundred and fifty pounds.

(2) Any individual who, in the manner prescribed by the Income Tax Acts, makes a claim in that behalf, makes a return in the prescribed form of his total income, and proves that at the commencement of the year of assessment either he or, in the case of a married man, his wife living with him was of the age of sixty-five years or upwards and that his total income for the year of assessment does not exceed five hundred pounds, shall, for the purpose of ascertaining the amount of his assess-

(*f*) See Act of 1927, s. 40 (1) and 5th Sched. Part I.

able income for the purpose of income tax, be allowed a deduction from the amount of his total income of a sum equal to one-sixth of the amount of that income, and any individual who would, but for the fact that his total income exceeds five hundred pounds, be entitled to an allowance as aforesaid shall be entitled to have the amount of the income tax payable in respect of his total income reduced, where necessary, so as not to exceed a sum equal to the aggregate of the two following amounts, that is to say, the amount of the tax which would have been payable if his total income had amounted to, but had not exceeded, five hundred pounds, and one-half of the amount by which his total income exceeds five hundred pounds:

Provided that any deduction or relief under this subsection shall be in substitution for and not in addition to the deduction under subsection (1) of this section.

(3) The provisions of sections twenty-seven, twenty-eight, twenty-nine and thirty of the Income Tax Act, 1918, and of paragraph XVII. of the Fifth Schedule to that Act shall apply for the purpose of claims under this section, and references in any enactment to section sixteen of the Finance Act, 1920, or to the deduction of any allowance in respect of earned income shall be construed as references to this section and to the allowances and relief thereunder:

Provided that, where, on an application made for the purpose under the provisions of the Income Tax Acts, income tax for any year is assessable and chargeable on the incomes of the husband and wife respectively as if they were not married, the benefit of any allowance or relief under the last preceding subsection shall be apportioned between the husband and wife according to the amounts of their respective total incomes.

(4) Paragraph (b) of subsection (1) of section one hundred and five of the Income Tax Act, 1918, as amended by the Third Schedule to the Finance Act, 1920, shall have effect as though the words "one hundred and sixty pounds" were substituted for the words "one hundred and fifty pounds."

(5) In this section the expressions "earned income" and "total income" mean respectively earned income as estimated in accordance with the provisions of the Income Tax Acts and total income from all sources as so estimated.

16. Rules 6 and 7 of Cases I. and II. of Schedule D (which provide, in connection with the charge to income tax under that Schedule of the profits or gains of a trade, for the allowance of deductions in respect of the wear and tear of machinery and plant and in respect of expenses incurred in replacing obsolete machinery or plant) shall apply as if references in those Rules to the profits or gains of a trade included references to the profits or gains, whether assessable under Schedule D or otherwise, of a profession, employment, vocation or office, and, where they are ascertained otherwise than by reference to assessable value, to the profits or gains arising from the occupation of lands, including

woodlands, and in relation to profits or gains assessable under some Schedule other than Schedule D as if the provisions of the said Rules were applicable to the tax under that other Schedule:

Provided that—

(i) where the profits or gains are not assessed under Schedule D, the powers of the Additional Commissioners under paragraph (4) of the said Rule 6 may be exercised by the General Commissioners; and

(ii) in the case of a claim for the allowance of a deduction for wear and tear in any year from the profits or gains arising to any person from the occupation of lands, including woodlands, the appropriate deduction for wear and tear shall, for the purposes of paragraph (6) of the said Rule 6, be deemed to have been allowed for any previous year for which profits or gains arising to that person from the occupation of lands, including woodlands, were determined by reference to assessable value.

17.—(1) Where sales or transactions are carried out on behalf of a non-resident person through a broker in the ordinary course of his business as such, and the broker satisfies the conditions required to be satisfied for the purposes of this section, then, notwithstanding that the broker is a person who acts regularly for the non-resident person as such broker, the non-resident person shall not be chargeable to income tax in the name of that broker in respect of profits or gains arising from those sales or transactions.

(2) The conditions required to be satisfied for the purposes of this section are that the broker must be a person carrying on bonâ fide the business of a broker in Great Britain or Northern Ireland, and that he must receive in respect of the business of the non-resident person which is transacted through him remuneration at a rate not less than that customary in the class of business in question.

(3) In this section the expression "broker" includes a general commission agent.

(4) Rule 10 of the General Rules shall have effect subject to the provisions of this section.

18. Weekly wage-earners to whom Rule 2 of the Rules applicable to Cases I. and II. of Schedule D applies shall . . . (*g*) be assessed and charged to tax in respect of their wages in each half of the year instead of in each quarter of the year, and for references in any enactment to quarterly assessment and charge and to quarters of the year in connection with the assessment and charge of weekly wage-earners there shall be substituted references to half-yearly assessment and charge and to half-years, and all such enactments shall have effect accordingly.

(*g*) Words repealed and section continued for every subsequent year, Act of 1926, s. 21.

19.—(1) Any claim for—

(a) exemption from income tax under the provisions of section thirty-seven of the Income Tax Act, 1918, or section thirty of the Finance Act, 1921 (which sections provide respectively for exemption in respect of certain income of charities and for exemption in respect of lands owned and occupied by charities and of profits of trades carried on by beneficiaries of charities); or

(b) repayment of income tax under section thirty-six of the Income Tax Act, 1918 (which provides for the repayment in certain cases of income tax in respect of interest paid to banks, discount houses, &c., out of taxed profits);

shall be made to the Commissioners of Inland Revenue in such form as they may prescribe, and the said Commissioners shall on proof of the facts to their satisfaction allow the claim accordingly (*h*).

(2) Any person who is aggrieved by the decision of the said Commissioners on a claim made by him as aforesaid may, by notice in writing to that effect given to the said Commissioners within twenty-one days from the date on which notice of the decision is given to him, make an application to have his claim for exemption or repayment, as the case may be, heard and determined by the Special Commissioners.

(3) Where any such application as aforesaid is made, the Special Commissioners shall hear and determine the claim in like manner as an appeal made to them against an assessment under Schedule D, and all the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(4) Section forty of the Income Tax Act, 1918 (which contains provisions with respect to claims under sections thirty-seven, thirty-eight and thirty-nine of that Act), shall cease to apply to claims for exemption under section thirty-seven of that Act.

20.—(1) Where under or by virtue of the Trading with the Enemy Acts, 1914 to 1918, or any Order in Council made under any Treaty of Peace Act, any securities to which this section applies became vested in any custodian or administrator of enemy property, any question of liability to income tax in respect of the dividends or interest on the securities shall be determined as if the securities had not become so vested.

(2) The securities to which this section applies are those classes of securities, stocks, funds or shares the dividends or interest whereon are chargeable to income tax under Schedule C or under Rule 7 of the Miscellaneous Rules applicable to Schedule D, or were chargeable to income tax under any enactments replaced by the said Schedule C or the said Rule 7 and for the purposes of this section the expression "Treaty

(*h*) See Act of 1926, s. 20, *infra*.

of Peace Act" means any Act for carrying into effect any treaty of peace made after the late war between His Majesty and any other power.

21. Section twenty-one of the Finance Act, 1923 (which grants an exemption for charities in the Irish Free State in respect of income tax for the year 1923-24), shall apply with respect to income tax chargeable for the years 1925-26, 1926-27, and 1927-28, as it applied with respect to income tax chargeable for the year 1923-24.

. . . . . .

PART IV.—GENERAL.

25.—(1) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions which is outside Great Britain and Northern Ireland, that Government shall, in respect of the trade or business and of all operations in connection therewith, all property occupied in Great Britain or Northern Ireland and all goods owned in Great Britain or Northern Ireland for the purposes thereof, and all income arising in connection therewith, be liable, in the same manner as in the like case any other person would be, to all taxation for the time being in force in Great Britain or Northern Ireland.

(2) In this section the expression "His Majesty's Dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

(3) Nothing in this section shall—

(a) affect the immunity of any such Government as aforesaid from taxation in respect of any income or property to which subsection (1) of this section does not apply; or

(b) be taken to prejudice the question of any liability on the part of any such Government in respect of any period before the commencement of this Act to taxation in respect of the matters mentioned in subsection (1).

26. A High Commissioner or Agent-General within the meaning of section nineteen of the Finance Act, 1923 (which exempts from income tax the salaries of High Commissioners, Agents-General and their staffs), who is resident in Great Britain or Northern Ireland shall be entitled to the same immunity from income tax (including super-tax) and land tax as that to which an accredited minister of a foreign state so resident is entitled, whether by virtue of any Act or otherwise, and any person having or exercising any employment to which the said section nineteen applies shall be entitled to the same immunity from income tax (including super-tax) and land tax as that to which a member of the staff of an accredited minister of a foreign state is entitled, whether by virtue of any Act or otherwise.

. . . . . .

28. . . .

(2) Part II. of this Act shall be construed together with the Income Tax Acts.

. . . . . .

(4) This Act may be cited as the Finance Act, 1925.

. . . . . .

(6) The enactment set out in the Fifth Schedule to this Act is hereby repealed to the extent mentioned in the third column of that Schedule.

FIFTH SCHEDULE.

ENACTMENT REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
10 & 11 Geo. 5, c. 18.	The Finance Act, 1920	Section sixteen.

THE TITHE ACT, 1925.

(15 & 16 GEO. 5, c. 87.)

[22nd December, 1925.]

8.—(1) The vesting in Queen Anne's Bounty by virtue of this Part of this Act of any tithe rentcharge shall not, nor shall the postponement under this Act of any payments into the sinking fund or any consequential increase of such payments, affect the amount on which the incumbent of the benefice on account of which the tithe rentcharge is held or other the person for the time being entitled to receive the emoluments of the benefice is liable to pay income tax in respect of tithe rentcharge, but the amount of income tax payable in respect of the tithe rentcharge shall be paid by Queen Anne's Bounty and by them deducted from the sum payable to the incumbent, and the deducting of such amount shall be deemed to be a payment by the incumbent of the tax payable in respect of the sums paid to him by Queen Anne's Bounty under section five of this Act.

THE FINANCE ACT, 1926.

(16 & 17 Geo. 5, c. 22.)

[4th August, 1926.]

Part III.—Income Tax.

Charge of Tax and Miscellaneous.

. . . . . .

20. The provisions of section nineteen of the Finance Act, 1925, prescribing the procedure with respect to the making of certain claims and with respect to applications to have such claims determined by the Special Commissioners, shall apply to claims which an individual is entitled to make by virtue of the proviso to subsection (1) of section twenty-four of the Finance Act, 1920 (which proviso exempts from the provisions of the said section twenty-four individuals who satisfy the Commissioners of Inland Revenue with respect to certain matters), in the same manner as they apply to the claims mentioned in the said section nineteen, but with the substitution in sub-section (2) thereof of three months for twenty-one days.

21. (*Continues in force Act of* 1925, *s.* 18, *which see.*)

22.—(1) Where it is provided by the Income Tax Acts that income tax in respect of profits or gains or income from any source or in respect of the property in lands, tenements, hereditaments or heritages is to be computed by reference to the amount of the profits or gains or income of some period preceding the year of assessment, then, notwithstanding that no profits or gains or income arise from that source or that property for or within the year of assessment, income tax as so computed shall be charged for that year, and section one of the Income Tax Act, 1918, shall be construed and have effect accordingly, except that paragraph (1) of Rule 3 of the Miscellaneous Rules applicable to Schedule D shall not apply in any case where the person charged to tax has not within the year of assessment ceased to possess the source of the profits or gains or income or the property.

(2) The foregoing provisions of this section shall be deemed always to have had effect in relation to income tax chargeable in respect of the annual value of lands, tenements, hereditaments or heritages falling within No. II. or No. III. of Schedule A, in relation to profits falling within Rule 8 of the Rules applicable to Schedule B and in relation to profits or gains falling within Cases I, II or VI of Schedule D.

23.—(1) The Agreement made the fourteenth day of April, nineteen hundred and twenty-six, between the British Government and the Government of the Irish Free State in respect of double income tax (which Agreement is set out in Part I. of the Second Schedule

to this Act) is hereby confirmed, and shall have effect, with respect to exemption or relief to be granted from British income tax and super-tax, for the year 1926-27 and any subsequent year, provided that, with respect to exemption or relief to be granted from Irish Free State income tax and super-tax, it has effect for that year by virtue of an Act of the Legislature of the Irish Free State.

(2) For the purpose of giving effect to the said Agreement, the Income Tax Acts in relation to persons resident in Great Britain or Northern Ireland, whether or not also resident in the Irish Free State, and to persons intrusted with payment to persons so resident, and in relation to claims by persons resident in the Irish Free State, shall for any year for which the said agreement is in force have effect subject to the modifications set forth in Part II. of the said Second Schedule.

24. (*Amends Rules applicable to Schedule C, which see.*)

25.—(1) In the case of an appeal against an assessment made under Schedule D or according to the rules applicable to that Schedule, the appellant shall in the notice of appeal specify the grounds of the appeal:

Provided that, if on the hearing of the appeal the appellant desires to go into any ground of appeal which was not specified in the notice and the omission of that ground from the notice was, in the opinion of the Commissioners hearing the appeal, not wilful or unreasonable, those Commissioners shall not, by reason of anything in this subsection, be precluded from allowing the appellant to go into that ground or taking it into their consideration.

(2) Notwithstanding that the hearing of an appeal against any such assessment either—

(a) has been postponed under subsection (3) of section one hundred and thirty-six of the Income Tax Act, 1918; or

(b) has been adjourned,

beyond the time limited for hearing appeals, the General Commissioners shall nevertheless proceed to allow and confirm the assessment as required by subsection (3) of section one hundred and twenty-two of the said Act:

Provided that—

(i) pending the determination of the appeal, the allowance and confirmation of the assessment shall be deemed to be in respect of such amount only of the tax thereby assessed as appears to the General Commissioners not to be in dispute, and tax shall be collected and paid in that amount in all respects as if it were tax charged by an assessment in respect of which no appeal was pending; and

(ii) on the determination of the appeal any balance of tax chargeable in accordance with the determination shall be

payable or any tax overpaid shall be repaid, as the case may require.

26. (*Amendment of Schedule A, No. VIII., rr.* 1, 2, *which see.*)

27. In the case of an assessment to income tax made at any time after the fifth day of April, nineteen hundred and twenty-three, an application under section twenty-four of the Finance Act, 1923 (which relates to relief in respect of error or mistake), may be made at any time not later than six years after the end of the year of assessment within which the assessment was made.

PART IV.—INCOME TAX.

Basis of Assessment.

28. Income tax in respect of the property in the lands, tenements, hereditaments or heritages mentioned in the first column of the Table contained in the Third Schedule to this Act shall cease to be chargeable under Schedule A, and shall become chargeable under the Case of Schedule D mentioned in the second column of the said Table, and the Rules applicable to each such Case, including the provisions of this Act amending those Rules, shall apply accordingly, but subject to the provisions contained in the third column of the said Table:

Provided that sections thirty-seven, thirty-eight and thirty-nine of the Income Tax Act, 1918, and section thirty of the Finance Act, 1921 (which provide for giving relief from income tax to certain charities, friendly societies and other bodies) shall be construed as if any income tax chargeable by virtue of this section under Schedule D instead of under Schedule A had remained chargeable under Schedule A.

29.—(1) Such enactments in the Income Tax Acts as provide that income tax under Schedule D shall in certain cases be computed on the full amount of the balance of the profits or gains, or on the full amount of the income, upon an average of three years, and so much of Rules 1 and 2 of the Rules applicable to Case IV of Schedule D as provides that income tax under that Case shall be computed on the full amount of the income which arises, or which has been or will be received, in the year of assessment, shall cease to have effect, and any income tax in respect of profits or gains or income chargeable under Case I, Case II, Case IV, or Case V of Schedule D which would but for the foregoing provisions of this section have been computed as aforesaid shall be computed, subject to the provisions of this Part of this Act and subject as hereinafter provided, on the full amount of the profits or gains or income of the year preceding the year of assessment (*a*):

(*a*) See Act of 1927, s. 23, below.

Provided that—

(a) Any person charged with income tax in respect of the profits or gains of any trade, profession or vocation which has been set up or commenced within the year preceding the year of assessment shall be entitled, on giving notice in writing to the surveyor within twelve months after the end of the year of assessment, to be charged to income tax on the amount of the profits or gains of the year of assessment; and

(b) In the case of income tax chargeable under Case IV or Case V of Schedule D—

(i) income tax shall be computed, as respects the year of assessment in which the income first arises, on the full amount of the income arising within that year:

(ii) where the income first arose on some day in the year preceding the year of assessment other than the sixth day of April, income tax shall be computed on the income of the year of assessment:

(iii) where the income first arose on the sixth day of April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than the sixth day of April, the person charged shall be entitled, on giving notice in writing to the surveyor within twelve months after the end of the year of assessment, to be charged on the amount of the income of that year, and if the tax charged has been paid, any tax overpaid shall be repaid:

(iv) references in this proviso to income which arises or which arose shall, in cases where income tax is to be computed by reference to the amount of income received in Great Britain or Northern Ireland, be construed as references to income which is or was so received.

(2) The foregoing provisions of this section shall not apply for the purposes of the computation of profits or gains chargeable under Case VI of Schedule D or according to the Rules applicable to that Case, but Rule 2 of those Rules shall be amended so as to provide that the computation of profits or gains so chargeable shall in no case be made according to an average of a period greater than one year.

(3) If any person who for the year 1926-27 was assessed and charged under Schedule D or according to the Rules applicable to that Schedule in respect of profits or gains or income arising from any source upon an average of a period of three years or more proves that the profits or gains or income of either of the first two of the three years upon the average of which he would, but for the provisions of this section, have been charged for the year 1927-28 were less than the profits or gains or income for one year upon an average

of the six years preceding those three years, or, if he was not in possession of the source of the profits or gains or income during the six years aforesaid, upon an average of the less period preceding the said three years during which he was so in possession, he shall, on giving notice in writing to the surveyor not later than the fifth day of October, nineteen hundred and twenty-seven, that he desires so to be charged, be charged to tax for both the years 1927-28 and 1928-29 in respect of the profits or gains or income arising from that source on the amount on which he would have been charged if this section had not passed (*b*):

Provided that for the purpose of the foregoing provision a person shall be treated as having been in possession of the source of any profits or gains or income during any year if during that year he was in possession of the source on his own account or the source was in the possession of a partnership of which he was a partner.

This subsection shall apply to persons in partnership as it applies to a person, and persons in partnership shall be deemed to have been in possession of the source of any profits or gains or income during any year if any of them was during that year in possession of the source on his own account or the source was in the possession of a partnership of which he was a partner.

30. All profits or income in respect of which any person is chargeable either under Rule 1 of the Rules applicable to Case III of Schedule D, or under Case IV of Schedule D or under Case V of Schedule D may respectively be assessed and charged in one sum:

Provided that—

(i) If in any year of assessment any person charged or chargeable in respect of any such profits or income as aforesaid ceases to possess any particular source of any such profits or income or any part of any such source, income tax in respect of the profits or income from that source or that part shall be computed separately, and the provisions of the section in this Part of this Act which relates to the discontinuance of a trade, profession or vocation, shall, subject to the necessary modifications, apply in any such case as if the cesser of the possession of the source or part were the discontinuance of a trade:

(ii) If in any year of assessment any person acquires a new source of any such profits or income or an addition to any source of any such profits or income, income tax in respect of the profits or income from that source or from the addition to that source shall be computed separately, and in the case of profits or income chargeable under Rule 1 of the Rules applicable to Case III the provisions of paragraph (1) of Rule 2 of those Rules shall apply, and in the case of profits or income charge-

(*b*) See Act of 1927, s. 22, below.

able under Case IV or Case V of Schedule D the provisions of proviso (b) to subsection (1) of the last preceding section of this Act shall apply:

(iii) Where any income in respect of which any person has previously been charged or chargeable under Case IV or Case V of Schedule D becomes at any time chargeable to tax by deduction under the provisions of Rule 7 of the Miscellaneous Rules applicable to Schedule D, the provisions of paragraph (i) of this proviso shall apply as if that person had at the time aforesaid ceased to possess the security or possession from which the income arises:

(iv) Where income arising to any person from any security or possession in any place out of Great Britain and Northern Ireland ceases at any time to be chargeable to income tax by deduction under the provisions of Rule 7 of the Miscellaneous Rules applicable to Schedule D, the provisions of paragraph (ii) of this proviso shall apply as if that security or possession were a new source of income acquired by that person at that time.

31.—(1) Where in any year of assessment a trade, profession or vocation is permanently discontinued, then, notwithstanding anything in this Part of this Act—

(a) the person charged or chargeable with tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on the sixth day of April in that year and ending on the date of the discontinuance, subject to any deduction or set-off to which he may be entitled under the section of this Part of this Act which provides for relief in respect of certain losses or under Rule 13 of the Rules applicable to Cases I and II of Schedule D, and, if he has been charged otherwise than in accordance with this provision, any tax overpaid shall be repaid, or an additional assessment may be made upon him, as the case may require;

(b) if the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs exceed the amount on which the person has been charged for that preceding year, or would have been charged if no such deduction or set-off as aforesaid had been allowed, an additional assessment may be made upon him, so that he shall be charged for that preceding year on the amount of the profits or gains of the said year ending on the fifth day of April, subject to any such deduction or set-off as aforesaid to which he may be entitled.

(2) In the case of the death of a person who, if he had not died,

would, under the provisions of this section, have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.

32.—(1) For Rule 11 of the Rules applicable to Cases I and II of Schedule D there shall be substituted the following (*c*):—

. . . . . .

(2) Where relief has been given under the provisions of Rule 11 of the Rules applicable to Cases I and II of Schedule D in respect of a falling short of profits or gains from some specific cause since or by reason of a change in a partnership of persons engaged in any trade or profession, or a succession to a trade or profession, which change or succession took place within the year 1927-28, the person or persons who after the change or succession are chargeable with tax in respect of profits or gains of the trade or profession shall be entitled, on giving notice in writing to the surveyor not later than the fifth day of October, nineteen hundred and twenty-nine, to be charged to tax for the year 1928-29 as if the trade or profession had been set up or commenced on the date of the aforesaid change or succession, and if the tax charged has been paid any tax overpaid shall be repaid.

(3) This section shall come into operation on the sixth day of April, nineteen hundred and twenty-eight.

33.—(1) Where a person has in any trade, profession or vocation carried on by him, either solely or in partnership, sustained a loss (to be computed in like manner as profits or gains under the Rules applicable to Cases I and II of Schedule D) in respect of which relief has not been wholly given under section thirty-four of the Income Tax Act, 1918 (which relates to relief in respect of certain losses), or under Rule 13 of the Rules applicable to Cases I and II of Schedule D (which provides for the setting-off of losses against profits or gains in a distinct trade), or under any other provision of the Income Tax Acts, he may claim that any portion of the loss for which relief has not been so given shall be carried forward and, as far as may be, deducted from or set-off against the amount of profits or gains on which he is assessed under Schedule D in respect of that trade, profession or vocation for the six following years of assessment:

Provided that in so far as relief in respect of any loss has been given to any person under this section that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.

(2) In the application of this section to a loss sustained by a partner in a partnership, the expression "the amount of profits or gains on which he is assessed" shall, in respect of any year, be taken to mean such portion of the amount on which the partnership is assessed

(*c*) See substituted rule printed in place of rule 11, *supra*, p. 504.

under Schedule D in respect of the trade, profession or vocation as he would be required under the Income Tax Acts to include in a return of his total income for that year.

(3) Any relief under this section shall be given as far as possible from the first subsequent assessment for any year within the said six following years, and so far as it cannot be so given then from the next such assessment and so on.

(4) Where a loss is sustained—

(a) by a person in the occupation of woodlands who, if he had made a profit, would, by reason of his election under Rule 7 of the Rules applicable to Schedule B, have been chargeable for the succeeding year to tax under Schedule D computed on the amount of that profit; or

(b) by a person in the occupation of lands who, if he had made a profit, would in consequence of his election under Rule 5 of the Rules applicable to Schedule B, have been chargeable for the succeeding year to tax under Schedule D computed on the amount of that profit;

this section shall apply so as to give relief in respect of that loss in the same manner and to the same extent as if it were a loss sustained in a trade:

Provided that, if for any year after the year in which the loss is sustained the person who suffered the loss is assessed under Schedule B in respect of the occupation of the lands in question, no such deduction or set-off as aforesaid shall in respect of that loss be allowed for that or any succeeding year.

(5) The provisions of this section shall extend so as to apply to a loss sustained in the year ending on the fifth day of April, nineteen hundred and twenty-seven, or, where it has been customary to make up accounts of the trade, profession or vocation, in the year which under the provisions of the next following section of this Act would be taken to be the year preceding the year 1927-28.

34.—(1) Where, in the case of any trade, profession or vocation, or of the occupation of any land occupied solely or mainly for the purposes of husbandry, or of the occupation of any woodlands, it has been customary to make up accounts,—

(a) if only one account was made up to a date within the year preceding the year of assessment, and that account was for a period of one year, the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment;

(b) if no account for a period of one year was made up to a date within the year preceding the year of assessment, or if more accounts than one were made up to dates within that year, the Commissioners of Inland Revenue shall decide what period of twelve months shall be deemed to be the year the profits or gains of which are to be taken to be

the profits or gains of the year preceding the year of assessment.

(2) Where the Commissioners of Inland Revenue have given a decision under paragraph (b) of the preceding subsection and it appears to them that in consequence thereof the tax for the last preceding year of assessment (not being a year prior to the year 1927-28) in respect of the profits or gains from the same source should be computed on the profits or gains of a corresponding period, they may give directions to that effect and an assessment or additional assessment or repayment of tax shall be made accordingly.

(3) An appeal shall lie against any assessment or additional assessment or in respect of any repayment of tax under subsection (2) of this section, and any such appeal shall be made to the General or Special Commissioners who shall consider the circumstances and grant such relief, if any, as is just, and their determination shall be final and conclusive, subject to the provisions of the Income Tax Acts relating to the statement of a case for the opinion of the High Court.

(4) In the case of the death of a person who, if he had not died, would, under the provisions of this section, have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.

35.—(1) Where in the case of any profits or gains chargeable under Case I, Case II, Rule 4 of Case III or Case VI of Schedule D it is necessary, in order to arrive at the profits or gains or losses of any year of assessment or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits or gains or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation:

Provided that nothing in this section shall be construed as limiting the power of the general commissioners with respect to the adjustment of an assessment under Rule 9 of the Rules applicable to Cases I and II of Schedule D.

(2) Any apportionment under this section shall be made in proportion to the number of months or fractions of months in the respective periods.

36.—(1) The amendments specified in the second column of the Fourth Schedule to this Act, which are consequential or relate to minor details, shall be made in the provisions of the Income Tax Act, 1918, specified in the first column of that Schedule.

(2) It shall be lawful for His Majesty in Council by Order to make such amendments of the forms of statements, lists and declarations contained in the Fifth Schedule to the Income Tax Act, 1918, as appear to His Majesty to be necessary to give effect to the provisions of this Part of this Act, and that Schedule shall have effect as amended by any Order so made.

37.—(1) The provisions of the Income Tax Acts shall, in relation to matters dealt with in this Part of this Act, have effect subject to the provisions of this Part of this Act, and shall, so far as inconsistent therewith, cease to have effect, and, subject as aforesaid, this Part of this Act shall be construed as one with the Income Tax Acts.

(2) The provisions of this Part of this Act shall, except as otherwise expressly provided, come into operation on the sixth day of April, nineteen hundred and twenty-seven, but shall not apply to any duties of income tax granted by Parliament before the commencement of this Part of this Act, or to any enactment or matter touching any such duties so granted, and all enactments relating to the basis of assessment which are in force immediately before the commencement of this Part of this Act shall continue to have effect in relation to any such duties so granted as if this Act had not passed, notwithstanding that those enactments are inconsistent with the provisions of, or are expressly repealed by, this Act.

(3) Subject to the provisions of this Act, the enactments set out in Part I. of the Fifth Schedule to this Act shall be repealed to the extent mentioned in the third column of that Schedule as from the sixth day of April, nineteen hundred and twenty-seven.

. . . . . .

PART VI.

47. . . . .

(2) Part III. of this Act shall be construed together with the Income Tax Acts.

(3) This Act may be cited as the Finance Act, 1926.

(4) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

. . . . . .

SECOND SCHEDULE.

PART I.—(*Agreement made the* 14*th April*, 1926, *between the British Government and the Government of the Irish Free State in respect of Double Income Tax.*)

. . . . . .

PART II.—(*Modifications of Income Tax Acts for the purpose of giving effect to the Agreement set out in Part I. of this Schedule.*)

. . . . . .

THIRD SCHEDULE.

Table of Transfers of various Properties from Schedule A to Schedule D.

Property in respect of which Tax chargeable.	Case of Schedule D under which to be charged.	Provisions with respect to new method of charging.
Certain lands, tenements, hereditaments or heritages to which the rules of No. II. of Schedule A apply.	Case III.	In computing the amount of an assessment under Schedule D the like deductions and allowances shall be made as would have been made if the assessment had been made under Schedule A, No. II. The proviso to Rule 6 of Schedule A, No. II., shall be deemed to be a rule of Schedule D, Case III, with respect to the fines to which the said Rule 6 applies.
Certain lands, tenements, hereditaments or heritages to which the rules of No. III. of Schedule A apply.	Case I.	Rules 4, 5 and 7 of Schedule A, No. III., shall apply and shall be deemed to be rules of Schedule D, Case I, so far as regards those lands, tenements, hereditaments or heritages. No deduction or set-off (other than the deduction granted by subsection (2) of section eighteen of the Finance Act, 1919) shall be allowed in estimating the profits on account of, or by reference to, the annual value of any lands, tenements, hereditaments or heritages occupied and used in connection with the concern and not separately assessed and charged under Schedule A.

FOURTH SCHEDULE.

Consequential and Minor Amendments of the Income Tax Act, 1918 (*d*).

(*d*) See Act of 1918, s. 19, and Rules 1, 3, 5 of the rules applicable to Cases I. and II. of Schedule D as printed above.

FIFTH SCHEDULE.

Enactments Repealed.

Part I.

Session and Chapter.	Short Title.	Extent of Repeal.
8 & 9 Geo. 5, c. 40.	The Income Tax Act, 1918.	In the First Schedule— In the Rule applicable to Case I of Schedule D the words "other than a "trade relating to lands, tenements, "hereditaments or heritages directed to "be charged under Schedule A." Rule 8 of the Rules applicable to Cases I and II of Schedule D. Rule 3 of the Miscellaneous Rules applicable to Schedule D.
11 & 12 Geo. 5, c. 32.	The Finance Act, 1921.	Section twenty-six.
14 & 15 Geo. 5, c. 21.	The Finance Act, 1924.	Section twenty-six.

THE FINANCE ACT, 1927.

(17 & 18 Geo. 5, c. 10.)

[29th July, 1927.]

. . . . .

Part II.

Income Tax.

Charge of Tax and Miscellaneous.

. . . . . .

21. Subsection (2) of section one hundred and fifty-seven of the Income Tax Act, 1918 (which provides that in the cases to which that subsection applies income tax shall be payable in two equal instalments), shall cease to have effect so far as it relates to tax chargeable under Schedule A, other than any tax so chargeable in respect of income which is, or is to be treated as, earned income.

22. Where a person has under the provisions of subsection (3) of section twenty-nine of the Finance Act, 1926, elected to be charged to income tax in respect of profits or gains or income arising from any source on the amount on which he would have been charged if the said section had not passed, that person shall not be entitled to relief under section thirty-three of the said Act in respect of a loss sustained in any year earlier than the year 1928-29 or than the year which is, under the provisions of section thirty-four of the said Act, to be taken to be the year preceding the year 1929-30.

23. Where a trade, profession or vocation has been set up or commenced or income has first become chargeable under Case V of Schedule D within the period of two years immediately preceding the year next before the year of assessment, the provisions of subsection (1) of section twenty-nine of the Finance Act, 1926, shall apply for the purpose of computing income tax in respect of the profits or gains of that trade, profession or vocation or in respect of that income as they apply for the purpose of computing income tax in respect of the profits or gains or income mentioned in that subsection.

24. The following shall be substituted for paragraph (c) of subsection (1) of section thirty of the Finance Act, 1921:— . . . (*e*).

25.—(1) Where the usual place of abode of the owner of a copyright is not within the United Kingdom, Rule 21 of the General Rules shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that copyright as it applies to annual payments not payable out of profits or gains brought into charge.

(2) In this section the expression "copyright" does not include a copyright in any dramatic work being a cinematograph production, or in any artistic work being a photograph intended to be used for the purpose of the exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus.

(3) This section shall apply to all payments of or on account of any royalties or sums made on or after the first day of July, nineteen hundred and twenty-seven, for or in respect of any such copyright as aforesaid, and to any payments made between the eleventh day of April, nineteen hundred and twenty-seven, and the said first day of July on account of any such royalties or sums payable in respect of any matter arising on or after the said first day of July.

(4) In this section the expression "owner of a copyright" includes a person who, notwithstanding that he has assigned a copyright to some other person, is entitled to receive periodical payments in respect of that copyright, and the reference to royalties or sums paid periodically for or in respect of a copyright shall not include royalties or sums paid in respect of copies of works which are shown to the satisfaction of the Special Commissioners to have been exported from the United Kingdom for distribution outside the United Kingdom.

(5) Rule 23 of the General Rules shall be extended so as to apply to all payments to which this section applies.

26.—(1) Rule 21 of the General Rules shall be amended by the substitution of the following paragraphs for paragraph (2) thereof:— . . . (*f*).

(*e*) See that sub-section as printed above.

(*f*) The substituted paragraphs are printed in General Rule 21, *supra*, p. 522.

(2) The provisions of the said Rule 21 as amended by subsection (1) of this section shall, subject to any necessary modifications, apply in the case of a payment which has been made before the passing of this Act unless at that date the tax to be deducted from the payment has been paid to the Crown.

27.—(1) Where in any year of assessment a person sustains a loss in any transaction, whether he was engaged therein solely or in partnership, being a transaction of such a nature that, if any profits had arisen therefrom, he would have been liable to be assessed in respect thereof under Case VI of Schedule D, he may claim that the amount of the loss sustained by him shall, as far as may be, be deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed for that year under the said Case VI, and that any portion of the loss for which relief is not so given shall, as far as may be, be carried forward and deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed under the said Case VI for any of the six following years of assessment.

(2) In the application of this section to a loss sustained by a partner in a partnership the expression "the amount of any profits or gains arising from any transaction in respect of which he is assessed" shall be taken to mean in respect of any year such portion of the amount on which the partnership is assessed under Case VI in respect of any transaction as he would be required under the Income Tax Acts to include in a return of his total income for that year.

(3) Any relief under this section by way of the carrying forward of the loss shall be given as far as possible from the first subsequent assessment in respect of any such profits or gains as aforesaid for any year within the said six following years, and, so far as it cannot be so given, then from the next such assessment and so on.

(4) The provisions of this section shall extend so as to apply to a loss sustained in the year ending on the fifth day of April, nineteen hundred and twenty-seven.

28.—(1) If a person who is assessable to income tax for the year 1927-28 or the year 1928-29 in respect of the profits or gains of a trade, profession or vocation (whether carried on by him solely or in partnership) which was set up and commenced after the sixth day of April, nineteen hundred and twenty-three, proves—

(a) that in any year earlier than the year 1926-27, or than the year which would under the provisions of section thirty-four of the Finance Act, 1926, be taken to be the year preceding the year 1927-28, he sustained a loss (to be computed in like manner as profits or gains under the Rules applicable to Cases I and II of Schedule D) in the trade, profession or vocation; and

(b) that that loss would, if Part IV of the Finance Act, 1926, had not passed, have been taken into account in the period upon the average of which the profits or gains of the trade, profession or vocation would have been calculated for the purposes of the assessment either for the year 1927-28 or for both the said years 1927-28 and 1928-29,

he may claim that an amount equal to one-third of that loss shall, as far as may be and subject to the provisions of this section, be deducted

(i) from the amount on which he is assessed in respect of the profits or gains of the trade, profession or vocation for the year 1927-28, or

(ii) both from that amount and from the amount on which he is so assessed for the year 1928-29, if the loss would have been taken into account in the period upon the average of which the profits or gains of the trade, profession or vocation would have been calculated for the purpose of the assessment for that last-mentioned year:

Provided that the amount of the deduction to be allowed to any person under this section in respect of the assessment for either of the said years shall not be in excess of the amount by which the aggregate amount of the assessments made on him in respect of the trade, profession or vocation for the period from the first setting up thereof until the end of that year (as reduced by any deduction under this section or by any deduction allowed under Rule 13 of the Rules applicable to Cases I and II of Schedule D on account of losses arising in the trade) is greater than the amount by which his aggregate profits and gains from the trade, profession or vocation for the said period exceeds the aggregate amount of his losses therefrom during that period, after deducting from those losses any loss or portion of a loss which has been or can be carried forward under section thirty-three of the Finance Act, 1926, and the amount of any loss or losses in respect of which relief is given under section thirty-four of the Income Tax Act, 1918.

(2) In so far as relief in respect of any loss is given to any person under this section, he shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.

(3) For the purpose of the application of this section to any person, the expressions "the amount on which he is assessed in respect of the profits or gains" and "the aggregate amount of the assessments made on him" shall in respect of any year or period be taken to mean the amount or the aggregate of the amounts respectively which that person would be required under the Income Tax Acts to include in respect of the profits of the trade, profession, or vocation in his return or returns of total income for that year or period if the return or returns were made before taking into account any adjust-

ment under section thirty-four of the Income Tax Act, 1918, or any deduction or set off under section thirty-three of the Finance Act, 1926, in respect of a loss.

29.—(1) If, where a business carried on by any individual or by any individuals in partnership has, whether before or after the passing of this Act, been transferred to a company in consideration solely or mainly of the allotment of shares of the company to that individual or those individuals, the total income as computed for the purposes of income tax of any individual to whom or to whose nominee or nominees shares have been so allotted for any year of assessment throughout which he is the beneficial owner of the shares and throughout which the company carries on the business, includes any income derived by him from the company, whether by way of dividends on those shares or otherwise, the provisions of section thirty-three of the Finance Act, 1926, shall apply as if the income so derived were profits and gains on which that individual was assessed under Schedule D in respect of that business for that year:

Provided that—

(i) where under the said section thirty-three, as applied by this section, a loss falls to be deducted from or set off against any such income for any year of assessment, the deduction or set off shall be made in the first place against that part, if any, of the income in respect of which the individual has been or is liable to be assessed to tax for that year; and

(ii) where any loss, or any part of a loss, falls to be deducted from or set off against any part of the income from which tax was deductible by the company, the individual shall on giving notice in writing to the surveyor not later than twelve months after the end of the year of assessment to which the claim relates, be entitled to claim an appropriate repayment of tax, and the provisions of the Income Tax Acts relating to claims for repayment of tax in respect of any allowance or deduction shall, subject to any necessary modification, apply to claims for repayment under this section.

(2) This section in its application to the year of assessment in which a business is transferred as aforesaid shall have effect as if for the reference to the year of assessment throughout which the individual is the beneficial owner of the shares and throughout which the company carries on business there were substituted a reference to the period from the date of transfer to the fifth day of April next following.

. . . . . .

Provisions relating to Super-tax.

31.—(1) Subsection (1) of section twenty-one of the Finance Act, 1922, shall have effect as if at the end thereof there was added as a new paragraph the following:— . . . (*a*)

Provided that the addition to the said section twenty-one of the foregoing new paragraph shall not operate so as to make the said section . . . (*a*).

(2) Subsection (1) of the said section twenty-one shall have effect as if after the words "apportioned among the members," there were inserted the words . . . (*a*).

(3) In subsection (6) of the said section twenty-one, for the words from the beginning thereof down to and including the words "beneficial owner of shares in the company" there shall be substituted the following:— . . . (*a*).

(4) Where an order has been made or a resolution passed for the winding-up of a company to which the said section twenty-one applies, the income of the company for the period from the end of the last year or other period for which accounts of the company have been made up to the date of the order or resolution for winding up shall, for the purposes of the said section, be deemed to be income of that period available for distribution to the members of the company, and, as respects that period and the next preceding year or other preceding period or periods ending within that next preceding year for which accounts have been made up, the said section shall apply as if the words "within a reasonable time" in subsection (1) of the said section were omitted therefrom.

(5) Any notice required under the provisions of the said section twenty-one to be served upon a company may, where the company is in liquidation, be served upon the liquidator of the company, and the liquidator shall be responsible for doing all matters or things required to be done by or on behalf of the company, and the liquidator shall be responsible for the due payment of any super-tax payable by or recoverable from the company under the provisions of the said section.

(6) The income apportioned to a member of a company for the period from the end of the last year or other period for which accounts have been made up to the date of the order or resolution for winding-up shall, for the purposes of super-tax, be deemed to have been received by him on the date of that order or resolution.

(7) The following shall be substituted for paragraph 5 of the First Schedule to the Finance Act, 1922:— . . . (*b*).

(8) The following shall be substituted for paragraph 9 of the First Schedule to the Act of 1922, as printed *supra*, p. 556.

(*a*) See sect. 21 of the Finance Act, 1922, as printed *supra*, p. 549.

(*b*) See First Schedule to the Act of 1922, as printed *supra*, p. 556.

32.—(1) Where a member of a company (in this section referred to as "the first company"), the income of which for any year or period has been deemed to be the income of its members and has been the subject of an apportionment (in this section referred to as "the original apportionment") under section twenty-one of the Finance Act, 1922, is itself a company (in this section referred to as "the second company") to which the provisions of that section apply, the excess of the amount so apportioned to the second company over the amount, if any, which has been received by the second company out of the income as aforesaid of the first company in such manner as would, in the case of an individual, render the amount so received liable to be included in the statement of his income for the purposes of super-tax, shall for the purposes of the said section be deemed to be income of the members of the second company and shall be apportioned among them in accordance with their respective interests in that company, and the provisions of the said section shall, with any necessary modifications, apply accordingly.

(2) The second company shall, on being required by notice in writing to that effect given to it by the Special Commissioners, furnish the Commissioners with a statement showing the names and addresses and particulars of the respective interests of all its members as on the last day of the year or other period the income of which formed the subject of the original apportionment, and the income apportioned as aforesaid to the members of the second company shall, for the purposes of super-tax, be deemed to have been received by those members on the date on which the income apportioned as aforesaid to the members of the first company is deemed to have been received by them.

(3) Any super-tax chargeable by reference to the provisions of the said section twenty-one in respect of the amount of the income of the first company apportioned to any member of the second company shall be assessed upon that member in the name of the first company, and shall, subject to the provisions of the said section as to payment by the member, be payable by the first company, and the provisions of the said section as to the assessment, collection and recovery of super-tax chargeable in respect of the income of a company apportioned to any member thereof shall, with any necessary modifications, apply accordingly.

(4) Where a member of any such second company as aforesaid is itself a company to which the said section twenty-one applies, the income apportioned to it under the foregoing provisions of this section shall in turn be deemed to be the income of its members and apportioned to them, for purposes of assessment to super-tax, in accordance with their respective interests, and so on successively where any member to whom income of a company has been apportioned is itself a company to which the said section applies, so that successive apportionments shall in like manner be made until the entire amount

of the income which was apportioned under the provisions of this section among the members of the second company has been apportioned to persons other than a company to which the said section applies, and the said section shall with any necessary modifications apply to such successive apportionments and to the furnishing of statements and to the assessment, collection and recovery of super-tax in respect of income apportioned thereunder, and, in particular, the date on which any such income is to be deemed to have been received by the member to whom it is apportioned shall be the date mentioned in subsection (2) of this section, and any super-tax which is chargeable in respect of income apportioned to a member being an individual shall be assessed and charged upon that member in the name of the first company.

33.—(1) Any individual upon whom notice is served by the Special Commissioners requiring him to furnish a statement of and particulars relating to any assets in which, at any time during the period specified in the notice, he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted, if the income from such assets had accrued from day to day and been apportioned accordingly, shall, whether an assessment to super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

(2) The Special Commissioners may serve further notices whenever they consider it necessary for the purposes of this section until complete particulars have been furnished to their satisfaction.

(3) If it appears to the Special Commissioners by reference to all the circumstances in relation to the assets of any such individual (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such assets) that the individual has thereby avoided or would avoid more than ten per cent. of the amount of the super-tax for any year which would have been payable in his case if the income from those assets had been deemed to accrue from day to day and had been apportioned accordingly and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of super-tax, then those assets shall be deemed to be assets to which subsection (4) of this section applies.

(4) For the purposes of assessment to super-tax in the case of any such individual, the income from any assets to which this subsection applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such assets by or to him shall be deemed to have been received as and when it is deemed to have accrued:

Provided that an individual shall not be liable to be assessed to super-tax under this section in respect of any such income if he proves to the satisfaction of the Special Commissioners that the avoidance of super-tax was exceptional and not systematic, and that there was not in this case in any of the three next preceding years any such avoidance of super-tax as is described in the provisions of the last preceding subsection.

(5) If any individual fails to furnish any statement or particulars required under this section, or if the Special Commissioners are not satisfied with any statement or particulars furnished under this section, they may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of his total income for the purposes of super-tax.

(6) If any individual without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding fifty pounds, and, after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues.

(7) For the purposes of this section, the expression "assets" means—

(a) stocks or securities entitled to interest or dividend at a fixed rate only, not being stocks or securities the interest or dividend on which is dependent on the earnings of a company; and

(b) any other stocks or securities and any shares, if transactions in relation thereto have been effected by the individual otherwise than through a stock exchange in the United Kingdom and by a transfer on which duty has been paid at the rate of one pound per cent. under the heading "Conveyance or Transfer on Sale" in the First Schedule to the Stamp Act, 1891.

34. If, on an application made by any individual for the purpose, either at the time of making his return for the purposes of super-tax for any year or within the time limited for appealing against the assessment upon him to super-tax for that year, the applicant proves to the satisfaction of the Special Commissioners—

(a) that, as respects any assets, in consequence of the operation of the provisions of the Income Tax Acts which require that for purposes of super-tax any income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, the income from those assets, as estimated for the purposes of super-tax for that year, represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day; and

(b) that, in consequence, the amount of super-tax payable by him for that year exceeds by more than five per cent. the amount

of the super-tax which would have been payable by him for that year if the amount of his income from those assets had not exceeded the amount which would be attributable to a period of one full year if the income from those assets were deemed to have accrued from day to day;

the Special Commissioners shall charge him to super-tax, or adjust his liability to super-tax, for that year and any succeeding year so as to give such relief as may be just, having regard to all the circumstances and in particular to the amount of any liability or additional liability to super-tax which would have arisen for any preceding year or years if—

(i) the income from such assets as aforesaid were deemed to have accrued from day to day and to have been apportioned accordingly; and

(ii) the income so deemed to have been apportioned to him had been treated as part of his total income for the purposes of super-tax.

35. If, on an application made by any individual, either at the time of making his return for the purposes of super-tax for any year or within the time limited for appealing against the assessment upon him to super-tax for that year, the applicant proves to the satisfaction of the Special Commissioners that, in consequence of the sale or transfer to him of any assets, the amount of super-tax payable by him for that year exceeds by more than ten per cent. the amount of the super-tax which would have been payable by him for that year if the income from those assets and from any assets sold or transferred by him were deemed to have accrued from day to day, then, for the purposes of any assessment to super-tax in the case of that individual for that year, the income from all such assets as aforesaid shall be deemed to have accrued from day to day and to have been received by him as and when it is deemed to have accrued.

36.—(1) Any income arising in respect of any assets which for any of the purposes of the last three preceding sections of this Act is deemed to have accrued from day to day or which is to be computed as if it were income that accrued from day to day shall—

(a) if payable in respect of any stated period, be deemed to have accrued from day to day during that period; and

(b) if not payable in respect of any stated period, be deemed to have accrued from day to day during the period of twelve months next preceding the date on which that income was declared payable, or during the period between the last previous declaration of a dividend, (not being a dividend expressed to be an interim dividend in respect of a stated period) payment of interest, or other yield or produce of such asset and the date aforesaid, whichever period is less.

(2) The provisions of the Income Tax Acts relating to appeals against assessments to super-tax, including the provisions relating to the statement of a case for the opinion of the High Court on a point of law, shall, with any necessary modifications, apply for the purposes of the last three preceding sections of this Act.

37. The provisions of the last six preceding sections of this Act shall apply for the purposes of assessment to super-tax for the year 1928-29.

Part III.

Amendment with respect to Method of charging additional Income Tax on higher income, basis of assessment under Schedule E., &c.

38.—(1) Income tax for the year 1928-29 and every subsequent year shall, instead of being charged at a single rate, be charged at a standard rate and, in the case of an individual whose total income from all sources exceeds a stated amount, at a rate or rates exceeding the standard rate in respect of any part or parts of his income in excess of that amount, and where income tax is so charged for any year the following provisions shall have effect, subject to the other provisions of this Part of this Act—

(a) all such enactments relating to income tax as were in force immediately before the commencement of this Part of this Act shall, in so far as they relate to income tax (not including super-tax) have effect as if income tax were charged for that year at the standard rate only, and in the case of an individual whose total income exceeds the stated amount, the amount of the income tax so charged shall, so far as that income tax is borne by him in respect of his income, be deemed to be an instalment at the standard rate of the amount of income tax for which he is chargeable for that year;

(b) where the amount of income tax payable by an individual for that year in respect of his total income is greater than the amount which would have been payable by him in respect thereof if income tax had been chargeable at the standard rate only, the difference between those two amounts (in this Part of this Act referred to as "sur-tax") shall be computed, assessed, charged, collected and paid as a deferred instalment of income tax according to the provisions of this Part of this Act relating to sur-tax;

and super-tax shall not be charged for the year 1929-30 or any subsequent year.

(2) The expression "total income" in relation to any person means the total income of that person from all sources estimated, as the case may be, either in accordance with the provisions of the Income Tax

Acts as they apply to income tax chargeable at the standard rate or in accordance with those provisions as they apply to sur-tax.

39.—(1) Such of the provisions of the Income Tax Acts as provide that income tax may be deducted from any payment at the rate or rates of tax in force during the period through which the payment was accruing due, or that there may be deducted from any dividend the tax appropriate thereto, or that a proportionate deduction of the tax charged shall be allowed by any person out of any produce or value payable to him, shall have effect as if they provided that tax may be deducted or shall be allowed at the standard rate for the year in which the amount payable becomes due:

Provided that this subsection shall not—

(a) apply to the deduction to be made under Rule 1 of No. VIII. in Schedule A.; or

(b) affect the first proviso to Rule 4 of the said No. VIII. relating to deductions in Scotland.

(2) In estimating under the Income Tax Acts the total income of any person, any income which is chargeable with income tax by way of deduction at the standard rate in force for any year shall be deemed to be income of that year, and any deductions which are allowable on account of sums payable under deduction of income tax at the standard rate in force for any year out of the property or profits of that person shall be allowed as deductions in respect of that year, notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that year.

(3) Where a person is required to be assessed and charged with income tax in respect of any property, profits or gains out of which he makes any payment in respect of any annual interest, annuity or other annual sum, or any royalty or other sum in respect of the user of a patent, he shall, in respect of so much of the property, profits or gains as is equal to the said payment and may be deducted in computing his total income, be charged at the standard rate only.

40.—(1) The enactments set out in Part I of the Fifth Schedule to this Act in so far as they provide for relief from income tax either by means of a deduction from assessable income or from the amount of earned income or from the amount of total income, shall, subject to the amendments specified in the third column of the said Part I, have effect as if they provided for relief from income tax by means of a deduction from the amount of income tax with which any individual is chargeable equal to tax at the standard rate on the amount of the deduction from income to which he would have been entitled under the said provisions:

Provided that the amount of any deduction under this subsection shall be subject to such adjustment as may be proper in any case where relief is given in respect of Dominion income tax.

(2) Every individual shall, in substitution for the relief under section twenty-three of the Finance Act, 1920, be entitled to have

the amount of the income tax which remains chargeable on him in respect of his total income after there has been made any deduction of tax to which he is entitled under subsection (1) of this section reduced by a further deduction equal to one-half of the amount so remaining chargeable or equal to one-half the tax at the standard rate on two hundred and twenty-five pounds, whichever is the less:

Provided that, where an individual has received relief from United Kingdom income tax in respect of Dominion income tax, the deduction to be made under this subsection shall not be less than it would have been if no such relief had been given, but nothing in this subsection shall affect any adjustment required to be made under subsection (3) of section twenty-seven of the Finance Act, 1920 (which provides for an adjustment where relief in respect of Dominion income tax has been allowed in respect of any part of the income of any individual at a rate greater than the rate appropriate to his case).

(3) Where under the provisions of the Income Tax Acts an individual is entitled to claim relief from income tax (other than relief in respect of life insurance premiums), by repayment or otherwise, in respect of any amount which is paid or borne by him out of his income or which is allowable or may be deducted therefrom, or in respect of any reduction of an assessment relating to his income or any part thereof, or in respect of any adjustment or set off with regard to a loss, and claims that relief for any year of assessment, any relief granted shall not extend so as to make the total income tax paid or payable by that individual for that year less than it would have been if the amount in respect of which relief is claimed had been deducted in computing his total income for that year and the amount of any other deductions or reliefs to which he is entitled for that year had been determined accordingly.

(4) Any reference in any provision of the Income Tax Acts to any allowance or deduction which is replaced by a relief under this section shall be construed as a reference to such last-mentioned relief.

41.—(1) A claim for a deduction of tax under the last preceding section of this Act shall be delivered to the surveyor and shall be made in such form as the Commissioners of Inland Revenue may direct.

(2) Where the surveyor objects to any such claim it shall be heard and determined by the commissioners concerned in like manner as in the case of an appeal against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to a statement of a case for the opinion of the High Court on a point of law shall apply.

(3) Subject to the provisions of this section, all the provisions of the Income Tax Acts relating to claims for any allowance or deduction shall, with any necessary modifications, apply to claims to which this section relates:

Provided that nothing in this section shall affect the provisions of section twenty of the Finance Act, 1926 (which relates to the making of claims by certain individuals who are not resident in the United Kingdom).

42.—(1) Sur-tax shall be due and payable as a deferred instalment of income tax on or before the first day of January next after the end of the year of assessment for which it is payable, except that sur-tax or any part of any sur-tax included in an assessment which is signed and allowed on or after the said first day of January shall be deemed to be due and payable on the day next after the day on which the assessment is signed and allowed.

(2) Sur-tax shall be assessed and charged by the Special Commissioners, and, notwithstanding anything in the Income Tax Acts providing for the separate assessment of income arising from different sources, shall be assessed and charged in one sum.

(3) The Special Commissioners may make an assessment or additional assessment in respect of sur-tax during any time within the year of assessment or within the period allowed by the Income Tax Acts for the making of assessments and additional assessments in respect of income tax charged at the standard rate, and section twenty-four of the Finance Act, 1923 (which provides for relief in respect of error or mistake) shall, with any necessary modifications, apply to sur-tax as it applies to tax charged under an assessment under Schedule D.

(4) Where an assessment to income tax made at the standard rate has under the provisions of the Income Tax Acts become final and conclusive for any year, the assessment shall also be final and conclusive for the purpose of estimating total income for the purpose of sur-tax for that year, and no allowance or adjustment of liability on the ground of diminution of income or loss shall be taken into account in estimating the total income for that purpose, unless that allowance or adjustment has been previously made in respect of the income tax charged at the standard rate on an application under the special provisions of the Income Tax Acts relating thereto.

(5) For the purpose of charging sur-tax, there shall be deducted from the total income of an individual in the service of the Crown abroad, any such sum as the Treasury may allow for expenses which, in their opinion, are necessarily incidental to the discharge of the functions of his office, and for which an allowance has not already been made.

(6) Relief from United Kingdom income tax in respect of Dominion income tax shall not be taken into account in computing sur-tax, but shall be given from income tax charged or chargeable at the standard rate.

(7) Assessments in respect of sur-tax shall be subject to appeal to the Special Commissioners except on such matters as under subsection (4) of this section are to be regarded as having been finally

and conclusively determined, and all the provisions of the Income Tax Acts relating—

(a) to persons who are to be chargeable with income tax at the standard rate and to assessments to such tax;

(b) to appeals against such assessments;

(c) to the collection and recovery of such tax;

(d) to cases to be stated for the opinion of the High Court;

shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of sur-tax, and the Special Commissioners shall, for the purpose of assessment of sur-tax, have any powers of a surveyor and, for the purpose of the representation of the Crown on any appeal before the Special Commissioners, any person nominated in that behalf by the Commissioners of Inland Revenue shall have the same power at, and upon the determination of, the appeal as a surveyor has at, and upon the determination of, any appeal relating to income tax at the standard rate.

(8) The Commissioners of Inland Revenue may make regulations for the purpose of carrying into effect the provisions of this Act relating to sur-tax.

(9) If an application is made for the purpose in such manner and form as may be prescribed by the Commissioners of Inland Revenue, by either a husband or wife, before the sixth day of July in the year next following the year of assessment:—

(a) Sur-tax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of this Act with respect to the assessment, charge and recovery of sur-tax, and the penalties for failure to make a return, shall apply as if they were not married; and

(b) The income of the husband and wife shall be treated as one in estimating total income for the purposes of sur-tax, and the amount of sur-tax payable in respect of the total income shall be divided between the husband and wife in proportion to the amounts of their respective incomes and the total amount payable shall not be less than it would have been if an application had not been made under this section.

The Special Commissioners may require returns to be made at any time for the purpose of this subsection.

(10) Subject to the provisions of this Part of this Act, all the provisions of the Income Tax Acts which are in force as from the date of the commencement of this Part of this Act (other than Part II of the Income Tax Act, 1918), shall, in so far as they relate to super-tax or to any matter or thing touching super-tax, continue to have effect and be construed as relating also to sur-tax and to any similar matter or thing touching sur-tax, and as if, in the case of any individual liable to sur-tax, a return which he has been required to make under subsection (1) of the next following

section of this Act were a return which he had been required to make of his total income for the purposes of super-tax.

43.—(1) The provisions of the Income Tax Acts which direct that persons shall prepare and deliver statements of profits or gains shall be extended so as to require any individual upon whom a particular notice is served for that purpose to prepare and deliver within the time limited by such notice a true and correct return in the prescribed form of all the sources of his income and of the amount derived from each source for the year preceding the year of assessment, computed in accordance with the provisions of the Income Tax Acts, as amended by this Act:

Provided that the computation of income shall be made by reference to the year preceding the year of assessment and not by reference to any other year or period.

(2) Any particular notice which under the provisions of the Income Tax Acts (including subsection (1) of this section) may be given to any person requiring him to prepare and deliver any such lists, declarations, statements or returns as are required by the Income Tax Acts to be delivered (other than a notice requiring the delivery of a statement of the annual value of lands and tenements for the purposes of assessment under Schedule A or Schedule B) shall be given by the surveyor and not by the assessor, and any list, declaration, statement or return which the person to whom the notice is given is required to make shall be delivered to the surveyor, but nothing in this subsection shall affect the operation of section one hundred and seventeen of the Income Tax Act, 1918 (which relates to the powers of assessors for public departments).

(3) Any such lists, declarations, statements and returns as are referred to in subsections (1) and (2) of this section shall be in such form as the Commissioners of Inland Revenue shall prescribe, and in prescribing forms under this subsection the Commissioners shall have regard to the desirability of securing, as far as may be possible, that no person shall be required to make more than one return annually of the sources of his income and the amounts derived therefrom.

(4) Subject to the provisions contained in this section, all the provisions of the Income Tax Acts (including the provisions of any Regulations made under those Acts) relating to the delivery of lists, declarations, statements and returns to the assessor (including the provisions relating to penalties) shall, with any necessary modifications, apply to lists, declarations, statements and returns required by this section to be delivered to the surveyor and any such lists, declarations, statements and returns shall be made available to the General, Additional or Special Commissioners and their respective clerks, and, whenever necessary, to the assessors for the preparation and making of assessments.

44.—(1) It shall be the duty of every individual who, for any year of assessment, is chargeable to income tax in respect of any part of his total income at a rate exceeding the standard rate to give notice that he is so chargeable to the Special Commissioners before the thirtieth day of September next following the end of that year.

(2) In any case in which it appears to the Special Commissioners that the particulars contained in any return made by any person, whether acting on his own behalf or as representing an incapacitated, non-resident, or deceased person, are insufficient to enable them to assess and charge sur-tax or that any person has failed to make a return, the Special Commissioners may serve upon him, in manner prescribed by regulations under this Part of this Act, a notice requiring him to make a return of his total income or of the total income of the incapacitated, non-resident, or deceased person, as the case may be, and every person so required shall, whether he is or is not chargeable with sur-tax, make such a return in the form and within the time required by the notice.

(3) If any person fails to make any such return when so required or if the Special Commissioners are not satisfied with any return made by him, they may make an assessment of sur-tax according to the best of their judgment, and if any person, without reasonable excuse, fails to make any such return as aforesaid or give any notice required by subsection (1) of this section, he shall be liable to a penalty not exceeding fifty pounds, and after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the default continues.

(4) Notwithstanding anything in this Part of this Act, section one hundred and thirty-two of the Income Tax Act, 1918 (which contains provisions against fraudulent practices) shall apply for the purposes of sur-tax as it applies for purposes of income tax at the standard rate, subject to the modification that for the words "the general commissioners for the division in which he has been charged, or if he has not been charged, then for any division in which he is chargeable" there shall be substituted the words "the Special Commissioners."

45.—(1) Subject to the provisions of this section, Rule 1 of the Rules applicable to Schedule E shall be construed as if for the words "for the year of assessment" there were substituted the words "and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatsoever therefrom for the year preceding the year of assessment":

Provided that nothing in this section shall affect the basis of assessment—

(a) in any case falling within section seventeen of the Finance Act, 1923, which provides for income tax on leave pay, etc., to be chargeable under Schedule E; or

(b) in the case of any office or employment held or exercised occasionally or intermittently in the United Kingdom by a person who is not continuously resident there; or

(c) in the case of the half-yearly assessments on weekly wage earners employed by way of manual labour.

(2) Any deduction from emoluments allowed under the provisions of the Income Tax Acts for the purpose of computing an assessment to income tax under Schedule E shall be made by reference to the amount paid or borne for the year or portion of the year upon the emoluments of which the computation is made.

(3) Any person who was assessed and charged under Schedule E for the year 1927-28 in respect of any office or employment or of any annuity, pension or stipend and was so assessed and charged on the amount of the emoluments for that year shall, on giving notice in writing to the surveyor not later than the thirtieth day of June, nineteen hundred and twenty-nine, be entitled to require that any assessment under Schedule E for the year 1928-29 in respect of that office or employment or that annuity, pension or stipend shall be reduced to the amount of the emoluments for that last-mentioned year, if that amount is less than the amount of the emoluments of the preceding year, and thereupon the assessment shall be so reduced and any tax overpaid shall be repaid:

Provided that, where an assessment under Schedule E has been reduced for the year 1928-29 under the provisions of this subsection, the assessment under that Schedule for the year 1929-30 in respect of the office or employment or the annuity, pension or stipend shall be made on the amount of the emoluments thereof for that last-mentioned year.

(4) In the case of income tax chargeable under Schedule E in respect of any office or employment held by any person, or any annuity, pension or stipend to which any person is entitled—

(i) income tax shall be computed, as respects the year of assessment in which the person first holds the office or employment, or becomes entitled to the annuity, pension or stipend, on the amount of his emoluments for that year;

(ii) where the person first held the office or employment, or became entitled to the annuity, pension or stipend, on some day in the year preceding the year of assessment other than the sixth day of April, income tax shall be computed on the amount of the emoluments for the year of assessment;

(iii) where the person first held the office or employment, or became entitled to the annuity, pension or stipend, on the sixth day of April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than the sixth day of April, he shall be entitled, on giving notice in writing

to the surveyor within twelve months after the end of the year of assessment, to require that his emoluments shall be charged on the amount thereof for that year and if the tax charged has been paid, any tax overpaid shall be repaid.

(5) Where in any year of assessment a person ceases to hold an office or employment or to be entitled to an annuity, pension or stipend chargeable under Schedule E, tax shall be charged for that year on the amount of his emoluments for the period beginning on the sixth day of April in that year and ending on the date of the cessation, and, if tax has been charged otherwise than in accordance with this provision, any tax overpaid shall be repaid, or an additional assessment may be made, as the case may require, and if the emoluments for the year ending on the fifth day of April in the year preceding the year of assessment in which the cessation occurs exceed the amount on which tax has been charged for that preceding year in respect of the office, employment, annuity, pension or stipend, an additional assessment may be made so that tax shall be charged for that preceding year on the amount of the emoluments for the said year ending on the fifth day of April.

(6) In the case of the death of a person in whose case, if he had not died, tax would, under the provisions of the last preceding subsection, have become chargeable for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.

(7) Where any person has ceased to hold an office or employment under a railway company or has ceased to be entitled to any pension paid by a railway company, such part of any tax assessed and charged upon the company under Rule 7 of the Rules applicable to Schedule E in respect of that office, employment or pension as cannot be deducted out of emoluments shall be collected and levied from that person or from his executors or administrators, as the case may be, as if he or they had been chargeable and charged with the said tax.

(8) Section twenty-four of the Finance Act, 1923 (which provides for relief in respect of error or mistake), shall apply to tax charged under an assessment to income tax made under Schedule E as it applies to tax charged under an assessment to income tax made under Schedule D.

(9) Rules 2, 3 and 5 of the Rules applicable to Schedule E shall cease to have effect as regards assessments under that Schedule in the case of which the basis of assessment is affected by this section.

(10) In this section the expression "emoluments" means all salaries, fees, wages, perquisites or profits or gains whatsoever arising from an office or employment, or the amount of any annuity, pension or stipend, as the case may be.

46. The amendments set out in Part II of the Fifth Schedule to this Act, being amendments consequential on the foregoing pro-

visions of this Part of this Act, shall be made in sections twenty-five and twenty-seven of the Finance Act, 1920, and the amendments specified in the second column of Part III of the said Fifth Schedule (which are further consequential amendments or amendments which relate to minor details) shall be made in the provisions of the enactments specified in the first column of that Part of that Schedule.

47.—(1) The provisions of the Income Tax Acts shall, in relation to matters dealt with in this Part of this Act, have effect subject to the provisions of this Part of this Act and shall, so far as inconsistent therewith, cease to have effect, and subject as aforesaid this Part of this Act shall be construed as one with the Income Tax Acts.

(2) The provisions of this Part of this Act shall, except as otherwise expressly provided, come into operation on the sixth day of April, nineteen hundred and twenty-eight, but shall not apply to any duties of income tax or super-tax granted by Parliament before the commencement of this Part of this Act or to any super-tax for the year 1928-29 or to any enactment or matter touching any such duties or any such super-tax, and all enactments relating to income tax or super-tax which are in force immediately before the commencement of this Part of this Act shall continue to have effect in relation to any such duties or any such super-tax as if this Part of this Act had not passed, notwithstanding that those enactments are inconsistent with the provisions of or are expressly repealed by this Part of this Act.

(3) Subject to the provisions of this Act the enactments set out in Part I of the Sixth Schedule to this Act shall be repealed to the extent mentioned in the third column of that Schedule as from the dates respectively mentioned therein.

PART IV.

. . . . . .

57. . . . .

(2) Part II of this Act shall be construed together with the Income Tax Acts.

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(4) This Act may be cited as the Finance Act, 1927.

. . . . . .

FIFTH SCHEDULE.

Part I.

Enactment	Subject Matter.	Amendment.
The Finance Act, 1920:		
Section 17	Deductions to be allowed in ascertaining taxable income.	
Section 18	Personal allowance.	In subsection (2) the words "an amount equal to five-"sixths" shall be substituted for the words "an amount equal to "nine-tenths."
Section 19	Deduction in respect of relatives taking charge of widower's or widow's children.	
Section 20	Deduction in respect of widowed mother.	
Section 21	Deduction in respect of children.	
Section 22	Deduction in respect of dependent relatives.	
The Finance Act, 1925:		
Section 15	Allowances in respect of earned income and allowances from total income of persons of the age of sixty-five years.	

Part II.

1. *Amendments of section* 25 *of Finance Act,* 1920.

The following shall be substituted for paragraphs (b) and (c) of subsection (1) of the section (*c*):—

. . . . . .

2. *Amendments of section* 27 *of Finance Act,* 1920 (*d*).

. . . . . .

(iv) For the purposes of section twenty-seven a person shall not be deemed to have paid or to be liable to pay United Kingdom income tax on such part of his income as is equal to the amount by reference to which he is by virtue of subsection (1) of section forty of this Act granted relief from income tax by means of a deduction of tax.

(v) The words in paragraph (d) of subsection (8) of section twenty-seven from "For the purposes of this section" to the end of the section shall cease to have effect, and in lieu thereof the

(*c*) See Act of 1920, s. 25, as printed above.

(*d*) See Act of 1920, s. 27, as printed above, and notes thereto.

following provisions shall have effect for the purposes of the said section (*d*):—

PART III.

OTHER MINOR AND CONSEQUENTIAL AMENDMENTS OF INCOME TAX ACTS (*e*).

SIXTH SCHEDULE.

ENACTMENTS REPEALED.

PART I.

Session and Chapter.	Short Title.	Extent of Repeal.
8 & 9 Geo. 5, c. 40.	The Income Tax Act, 1918.	Part II. as from the sixth day of April, nineteen hundred and twenty-nine; in the Fifth Schedule paragraphs II to XIV, both inclusive, and paragraph XVI as from the sixth day of April, nineteen hundred and twenty-eight.
10 & 11 Geo. 5, c. 18.	The Finance Act, 1920.	In section thirty-three, the definition of "standard rate of tax" as from the sixth day of April, nineteen hundred and twenty-eight.
13 & 14 Geo. 5, c. 14.	The Finance Act, 1923.	Subsection (2) of section twenty nine as from the sixth day of April, nineteen hundred and twenty-nine.
14 & 15 Geo. 5, c. 21.	The Finance Act, 1924.	Section twenty-nine as from the sixth day of April, nineteen hundred and twenty-eight.

. . . . . .

(*d*) See Act of 1920, s. 27, as printed above, and notes thereto.

(*e*) See Act of 1918, ss. 48, 108, 112, 123, and Fifth Sched.; Act of 1922, s. 21, and First Sched., as printed above.

THE FINANCE ACT, 1928.

(18 & 19 Geo. 5, c. 17.)

[3rd August, 1928.]

. . . . . .

Part II.—Income Tax.

Charge of Tax and Miscellaneous.

15.—(1) Income tax for the year 1928-29 shall be charged—

(a) at the standard rate of four shillings in the pound, and

(b) in the case of an individual whose total income from all sources exceeds two thousand pounds, at the following higher rates in respect of the excess over two thousand pounds:—

For every pound of the first five hundred pounds of the excess	Four shillings and ninepence.
For every pound of the next five hundred pounds of the excess	Five shillings.
For every pound of the next one thousand pounds of the excess	Five shillings and sixpence.
For every pound of the next one thousand pounds of the excess	Six shillings and threepence.
For every pound of the next one thousand pounds of the excess	Seven shillings.
For every pound of the next two thousand pounds of the excess	Seven shillings and sixpence.
For every pound of the next two thousand pounds of the excess	Eight shillings.
For every pound of the next five thousand pounds of the excess	Eight shillings and sixpence.
For every pound of the next five thousand pounds of the excess	Nine shillings.
For every pound of the next ten thousand pounds of the excess	Nine shillings and sixpence.
For every pound of the remainder of the excess	Ten shillings.

(2) The rates of super-tax for the year 1928-29 shall, for the purposes of section four of the Income Tax Act, 1918, be the same as those for the year 1927-28.

(3) All such enactments as had effect with respect to the income tax and super-tax charged for the year 1927-28, shall, subject to the provisions of any enactments which were expressed to come into operation on the sixth day of April, nineteen hundred and twenty-eight, or to apply in relation to income tax or super-tax for the year beginning on

that day, have effect with respect to the income tax and super-tax charged for the year 1928-29.

(4) The annual value of any property which has been adopted for the purpose of income tax under Schedules A and B for the year 1927-28 shall be taken as the annual value of that property for the same purpose for the year 1928-29:

Provided that this subsection shall not apply to lands, tenements, and hereditaments in the administrative county of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is by that Act made conclusive for the purposes of income tax.

16. Section twenty-one of the Finance Act, 1920 (which provides for deductions in respect of children), shall be amended as follows:—

(1) In subsection (1)—

(a) for the words "living at the commencement of the year of assessment" there shall be substituted the words "living at any time within the year of assessment";

(b) for the words "thirty-six pounds" and "twenty-seven pounds" there shall be substituted respectively the words "sixty pounds" and "fifty pounds":

(2) In subsection (3) for the words "forty pounds" there shall be substituted the words "sixty pounds."

17.—(1) An individual who for any year of assessment is chargeable to sur-tax may, by giving notice in writing to the Special Commissioners not later than the first day of May next following the end of that year of his desire so to do, elect to make a return of his total income to those Commissioners, and any such election shall have effect not only as respects that year, but also as respects all subsequent years for which he remains chargeable to sur-tax:

Provided that any individual who has so elected may at any time in any subsequent year of assessment give notice in writing to the Commissioners of his desire to revoke the election and thereupon the election shall cease to have effect except as respects any year preceding the year in which notice is so given.

(2) Where for any year of assessment an election made by an individual under this section is in force—

(a) the Special Commissioners may serve upon that individual a notice requiring him to make a return of his total income, and that individual shall make such a return in the form and within the time required by the notice, and subsections (3) and (4) of section forty-four of the Finance Act, 1927, shall apply in relation to any such return; and

(b) the return required to be made by that individual under subsection (1) of section forty-three of the Finance Act, 1927, of all the sources of his income and of the amount derived from each source for that year shall be limited to a return of any income which is assessable under either Schedule D or Schedule E.

18.—(1) Any company to which section twenty-one of the Finance Act, 1922, applies, may at any time after the general meeting at which the accounts of the company made up for any year or other period are adopted, forward to the Special Commissioners for their consideration a copy of the said accounts, together with a copy of the report, if any, of the directors for that year or period, and such further information, if any, as it may think fit, and the Special Commissioners shall, subject to the provisions of this section, on receiving the said accounts and other documents, if any, proceed to consider the position of the company in relation to the said section twenty-one.

(2) The Special Commissioners may as soon as reasonably may be, but not later than twenty-eight days after the receipt of the said accounts and other documents, if any, call upon the company to furnish to them within twenty-eight days, or such extended period as they may subsequently allow, such further particulars as they may reasonably require:

Provided that if the particulars so required are not furnished to the Commissioners within the period or extended period allowed for the purpose they may proceed under this section upon the information before them.

(3) Where a company has under subsection (1) of this section forwarded to the Special Commissioners the accounts of the company for any year or other period, whether with or without any other documents, the following provisions shall have effect:—

(a) unless within three months after the receipt of the said accounts and other documents, or, if further particulars have been required as aforesaid, within three months after the receipt of those particulars, or the expiration of the period within which those particulars are to be furnished, as the case may be, the Special Commissioners intimate to the company their intention to take further action in the case of the company under the said section twenty-one in respect of that year or other period, the power of the Commissioners to take any such further action in respect of that year or other period shall absolutely cease and determine; and

(b) notwithstanding that the Special Commissioners have given such an intimation as aforesaid, they shall not after the expiration of six months from the date of the intimation have power in relation to that company to issue a notice under paragraph (4) of the First Schedule to the Finance Act, 1922, with respect to that year or period, or, unless such a notice has been issued before the expiration of the said period of six months, to give a direction in relation to the company under subsection (1) of section twenty-one of the said Act.

19. Where a person has been assessed to tax for any year of assessment, not being a year prior to the year 1927-28, under Rule 21 of the General Rules, in respect of a payment made wholly and exclusively for the purposes of a trade, profession, or vocation (not being a payment

of or on account of copyright royalties to which section twenty-five of the Finance Act, 1927, applies) the amount on which tax has been paid under that assessment shall, for the purposes of section thirty-three of the Finance Act, 1926, be treated as though it were a loss sustained in that trade, profession, or vocation, and, subject to the provisions of that section, relief in respect thereof shall be allowed in computing that person's liability to tax in respect of the profits or gains of that trade, profession, or vocation for the six years following the said year of assessment:

Provided that no relief shall be allowed under this section in respect of any such payment or any part of any such payment which is not ultimately borne by the person assessed or which is charged to capital.

20.—(1) Section twenty-eight of the Finance Act, 1923 (which relates to the allowance for repairs), shall continue in force until the fifth day of April, nineteen hundred and thirty-three.

(2) This section shall be deemed to have had effect as from the sixth day of April, nineteen hundred and twenty-eight.

21. The Agreement made the twenty-fifth day of April, nineteen hundred and twenty-eight, between the British Government and the Government of the Irish Free State amending the Agreement made on the fourteenth day of April, nineteen hundred and twenty-six, between the said Governments in respect of double income tax (which first mentioned Agreement is set out in the Fourth Schedule to this Act) is hereby confirmed, and shall have effect, with respect to exemption or relief to be granted from British tax, for the year 1928-29 and any subsequent year, provided that, with respect to exemption or relief to be granted from Irish Free State tax, it has effect for that year by virtue of an Act of the Legislature of the Irish Free State.

22. Notwithstanding anything in section five of the Small Debts (Ireland) Act, 1859, any such amount of income tax as is under the provisions of the Income Tax Acts recoverable summarily as a civil debt may, without prejudice to any other remedy, be recovered summarily in Northern Ireland, and in any summary proceedings in Northern Ireland for the recovery of income tax any order for the payment of money may be enforced in like manner as an order for the payment of a sum recoverable summarily as a civil debt is enforceable in England, and for the purpose of an order made in any such proceedings section thirty-five of the Summary Jurisdiction Act, 1879, shall apply to Northern Ireland with the substitution of a reference to the Debtors (Ireland) Act, 1872, for the reference therein to the Debtors Act, 1869.

PART III.—MISCELLANEOUS.

. . . . . .

30.—(1) Where any property is held upon trust in accordance with directions which are valid and effective under section nine of the Superannuation and other Trust Funds (Validation) Act, 1927 (which provides

for the validation of trust funds for the reduction of the National Debt), any income arising from that property or from any accumulations of any such income and any profits of any description otherwise accruing to the property and liable to be accumulated under the trust shall be exempt from income tax.

. . . . . .

35. . . .

(2) This Act so far as it relates to income tax shall be construed together with the Income Tax Acts.

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(4) This Act may be cited as the Finance Act, 1928.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(6) The enactments set out in the Fifth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

. . . . . .

FOURTH SCHEDULE.

Agreement made the 25th day of April, 1928, *between the British Government and the Government of the Irish Free State amending the Agreement made on the 14th day of April,* 1926, *between the said Governments in respect of Double Income Tax.*

. . . . . .

FIFTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
. . . . .		
13 & 14 Geo. 5, c. 14.	The Finance Act, 1923.	..... Subsection (5) of section twenty-eight; ....
. . . . .		

THE FINANCE ACT, 1929.

(19 & 20 Geo. 5, c. 21.)

[10th May, 1929.]

Income Tax.

1.—(1) Income tax for the year 1929-30 shall be charged at the standard rate of four shillings in the pound, and, in the case of an individual whose total income from all sources exceeds two thousand pounds, at the same higher rates in respect of the excess over two thousand pounds as were charged for the year 1928-29.

(2) All such enactments as had effect with respect to the income tax charged for the year 1928-29 (other than subsection (3) of section twenty-nine and subsection (2) of section thirty-two of the Finance Act, 1926, and section twenty-eight of the Finance Act, 1927), shall have effect with respect to the income tax charged for the year 1929-30.

(3) The annual value of any property which has been adopted for the purpose of income tax under Schedules A and B for the year 1928-29 shall be taken as the annual value of that property for the same purpose for the year 1929-30:

Provided that this subsection shall not apply to lands, tenements and hereditaments in the administrative county of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is by that Act made conclusive for the purposes of income tax.

. . . . . .

6.—(1) This Act, so far as it relates to income tax, shall be construed as one with the Income Tax Acts.

(2) This Act may be cited as the Finance Act, 1929.

. . . . . .

STATUTORY ORDERS.

SUPER-TAX AND SUR-TAX.

REGULATIONS (*a*) MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTION 72 (8) OF THE FINANCE (1909-10) ACT, 1910 (10 EDW. 7, c. 8). (STAT. R. & O. 1910, No. 666.)

The Special Commissioners shall serve a Notice on every person required by them to make a Return of his Total Income from all Sources. Such Notice shall be in the form hereto attached or in such amended form as the Commissioners of Inland Revenue shall approve.

On the making of an Assessment by the Special Commissioners they shall cause Notice to be served as hereinafter mentioned on the person assessed of the amount of the Assessment and of the Duty charged thereon.

All liability to the Super-Tax shall be assessable at the Office of the Special Commissioners, London, and Appeals shall be heard in London, Edinburgh and Dublin, and at such other towns as the Commissioners of Inland Revenue may direct.

A person aggrieved by an Assessment made upon him shall at any time within 28 days from the date of the service of the Notice of such Assessment, or within such further time as the Special Commissioners shall allow, be entitled to give notice to the Special Commissioners of his intention to appeal to them against the Assessment, and every such Notice shall specify the grounds of Appeal.

The Super-Tax payable shall be remitted by the person assessed to the Accountant-General of Inland Revenue, at his Office, Somerset House, London, on or before the 1st January in each year.

Any notice required to be served on any person under these Regulations may be either delivered to such person or left at his usual or last known place of abode or sent by post by . . . . (*b*) letter addressed to such person at his usual or last known place of abode, and such service shall be deemed sufficient service for the purpose of these Regulations.

REGULATIONS, DATED AUGUST 4, 1928, MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTIONS 7 (8) AND 220 (8) (a) OF THE INCOME TAX ACT, 1918, AND SECTION 42 (8) OF THE FINANCE ACT, 1927. (STAT. R. & O. 1928, No. 610.)

1. Any notice which the Special Commissioners may serve upon any person under Sub-section (2) of Section 44 of the Finance Act, 1927, or under Sub-section (2) of Section 17 of the Finance Act, 1928, shall be in such form as the Commissioners of Inland Revenue shall approve.

(*a*) Continued in force by Income Tax Act, 1918, sect. 238, Proviso (a), *supra*, p. 472.

(*b*) Words omitted, Stat. R. & O. 1922, No. 1329, para. 1; by para. 8, the expression "sent by post" means service by post as defined by sect. 26 of the Interpretation Act, 1889.

2. On the making of an assessment in respect of Sur-tax by the Special Commissioners, they shall cause notice to be served on the person assessed of the amount of the assessment.

3. Any notice which the Special Commissioners may serve upon any person under Sub-sections (1) or (2) of Section 33, or under Sub-section (2) of Section 44 of the Finance Act, 1927, or under Sub-section (2) of Section 17 of the Finance Act, 1928, and any notice required to be served upon any person under paragraph 2 of these Regulations may be sent by post by letter addressed to such person at his usual or last known place of abode.

4. Sur-tax shall be assessed and charged at the office of the Special Commissioners, London, and appeals shall be heard in London, Edinburgh and Belfast, and at such other towns as the Commissioners of Inland Revenue may direct.

5. A person aggrieved by an assessment to Sur-tax made upon him shall at any time within 28 days from the date of the service of the notice of such assessment, or within such further time as the Special Commissioners shall allow, be entitled to give notice to the Special Commissioners of his intention to appeal to them against the assessment, and every such notice shall specify the grounds of appeal.

6. The Sur-tax payable shall be remitted by the person assessed to the Accountant-General of Inland Revenue at his office, Somerset House, London, W.C.2.

7. Any notice of charge, notice of apportionment or other notice which the Special Commissioners are, by virtue of Section 21 of the Finance Act, 1922, or the First Schedule to that Act, (as amended by Section 31 and Section 32 of the Finance Act, 1927), authorised or required to serve upon a company, may be sent by post by letter addressed to the secretary of such company at its registered office.

8. Any notice of charge or other notice which the Special Commissioners are, by virtue of Section 21 of the Finance Act, 1922, or the First Schedule to that Act, (as amended by Section 31 and Section 32 of the Finance Act, 1927), authorised or required to serve upon a member of a company or any person in whose name any shares of a company are registered may be sent by post by letter addressed to such member or person at his usual or last known place of abode.

9. Where the Special Commissioners under Sub-section (2) of Section 18 of the Finance Act, 1928, require a company to furnish further particulars, or where under Sub-section (3) (a) of the said Section they intimate to a company their intention to take further action as referred to in that Sub-section, they shall notify such requirement or intention by notice in writing, and such notice may be sent by post by letter addressed to the secretary of such company at its registered office.

10 Any notice which the Special Commissioners are, by virtue of Sub-section (5) of Section 31 of the Finance Act, 1927, authorised to serve upon the liquidator of a company may be sent by post by letter addressed to such liquidator at his address for the purposes of the liquidation of the company, or at his usual or last known place of business or place of abode.

11. Where the Special Commissioners under Sub-section (1) of Section 22 of the Finance Act, 1922, require any individual to furnish to them such particulars as are referred to in that Sub-section, or where, under para-

graph 8 of the First Schedule to the Finance Act, 1922, they require any member of a company to make an amended statement of his total income, they shall notify the individual or member of such requirement by notice in writing and such notice may be sent by post by letter addressed to such individual or member at his usual or last known place of abode.

12. Any notice authorised or required to be given by the Special Commissioners under any of the enactments hereinbefore mentioned or these Regulations, may be signed by their Clerk or any person authorised by them in that behalf.

13. In these Regulations the expression "sent by post" means service by post as defined by Section 26 of the Interpretation Act, 1889.

14. Paragraphs 2, 3, 4, 5, 6 and 7 of the Regulations dated December 6th, 1922, made by the Commissioners of Inland Revenue under Sections 7 (8), 220 (8) (a) and 238 (a) of the Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), are hereby revoked (*c*).

WEEKLY WAGE-EARNERS.

REGULATIONS, DATED JULY 16, 1925, MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER THE INCOME TAX ACT, 1918, AS AMENDED BY THE FINANCE ACT, 1925 (15 & 16 GEO. 5, C. 36), WITH RESPECT TO THE ASSESSMENT, CHARGE AND COLLECTION OF INCOME TAX IN THE CASE OF WEEKLY WAGE-EARNERS, AND THE PROCEDURE TO BE ADOPTED FOR THE PURPOSE. (STAT. R. & O. 1925, No. 702.)

1. The two half-years for which half-yearly assessments are to be made shall end respectively on the following dates in each year:—

(1) 5th October.

(2) 5th April.

2. Income Tax in the case of wage-earners shall be assessed and charged by the Inspector of Taxes, who for this purpose may, in addition to the powers of an Inspector of Taxes, exercise all the powers of an Assessor and of any General Commissioners, except the power of hearing and determining an appeal.

3. The Inspector of Taxes shall serve on every person assessed by whom any tax is payable a notice of the assessment made upon him, addressed to him either at his place of employment or at his usual or last known place of abode.

4. An allowance not exceeding one-half of the annual amount of any allowance, deduction or relief which may be lawfully granted under Section 32 of the Income Tax Act, 1918, as amended by Section 26 of the Finance Act, 1920, or under any of the Sections 17 to 23 of the Finance Act, 1920, as amended by Sections 21 and 22 of the Finance Act, 1924, may be deducted from each half-yearly assessment on a wage-earner, and where full effect has not been given to the amount so allowable for the first half-year, the residue or any part of the residue of the allowance may be deducted from any assessment which is made for the second half of the same year.

(*c*) Paras. 1 and 8 only are left in force; their effect is given in note (*b*), *supra*.

5. Where a person assessed in a half-yearly assessment proves to the satisfaction of the Commissioners of Inland Revenue that any allowance, deduction or relief to which he is entitled under the provisions referred to in Regulation No. 4 has not been wholly allowed in the half-yearly assessments or otherwise, repayment shall be made by the Commissioners of the amount of tax overpaid.

6. Every employer, when required by notice from the Inspector of Taxes, shall, within twenty-one days from the date of such notice, deliver to the Inspector of Taxes a return of the names and places of residence, and the wages for the half-year, of all wage-earners employed by him whose wages for the half-year to which such notice relates have amounted to £80 or upwards. The employer shall also make a return in like manner of the wages of any wage-earner for the half-year whenever particulars in respect of that person are demanded by the Inspector of Taxes.

7. Every wage-earner when required by notice from an Inspector of Taxes shall within twenty-one days from the date of such notice deliver to the Inspector a return of his wages for the year of assessment, or for either half-year thereof, as the notice may require.

8. A person aggrieved by any half-yearly assessment made upon him must give notice thereof to the Inspector of Taxes, stating the grounds of his objection, within twenty-one days after the service of the notice of such assessment.

9. On receipt of any such notice of objection the Inspector of Taxes may, on proof to his satisfaction, agree with the wage-earner as to the correct amount to be assessed, and may thereupon amend the assessment. Notice of the amended assessment shall then be served by the Inspector of Taxes upon the wage-earner.

10. Where, on receipt of any such notice of objection, the Inspector of Taxes is unable to agree with the wage-earner as to the correct amount to be assessed, the Inspector shall, on application by the wage-earner, give notice to the Clerk to the General Commissioners of the Division in which the wage-earner is assessed, or, where the wage-earner elects to appeal to the Special Commissioners, to the Clerk to the Special Commissioners, and that notice shall operate as a notice of appeal by the wage-earner. The General Commissioners or Special Commissioners shall hear and determine every such appeal.

11. Notice of the day and time fixed for hearing any appeal shall be given by the Clerk to the Commissioners to the Inspector of Taxes and to the appellant respectively, fourteen days at least before the day fixed for the hearing of the appeal. Any such notice may be served by post.

12. Where no objection to the assessment is made within the prescribed period the tax charged under any half-yearly assessment for the half-year ending 5th October shall be payable on the 1st day of January in the year of assessment, or twenty-one days after the service of the notice of assessment, whichever is later; and the tax charged under any half-yearly assessment for the half-year ending 5th April shall be payable on the 1st day of July following the end of the year of assessment, or twenty-one days after the date of the service of the notice of assessment, whichever is later.

13. Where notice of objection to the assessment is given within the prescribed period and the assessment is amended by the Inspector of Taxes, the tax shall be payable on the 1st January or 1st July, respectively, for any

assessment for the half-year ending on the previous 5th October or 5th April, respectively, or fourteen days after the issue of a notice by the Inspector of the amended assessment, whichever is later.

14. The tax due on any assessment as determined by the General Commissioners or the Special Commissioners on appeal shall be payable on 1st January or 1st July, respectively, for any assessment for the half-year ending on the previous 5th October or 5th April, respectively, or fourteen days after the date of their determination of the appeal, whichever is later.

15. Whenever any person has removed to or resides or happens to be in any parish other than the parish in which a charge to tax has been made upon him, and the said tax or any part thereof is in arrear and unpaid, the Inspector of Taxes may authorise any Collector appointed by the Commissioners of Inland Revenue for the first-mentioned parish to demand payment thereof, and on non-payment to recover the same in the manner prescribed by the Income Tax Acts.

Where there is no Collector so appointed, the Inspector may issue a certificate setting out the facts as aforesaid to the General or other Commissioners acting for the Division comprising the first-mentioned parish, who shall cause the said amount of tax to be raised and levied under the provisions of the Income Tax Acts and to be paid over to the account of the Collector or Collectors for the parish in which the tax is charged.

. . . . . .

20. When any half-yearly assessments have been made by the Inspector of Taxes, a duplicate thereof together with warrants for collecting the tax shall be prepared by him and delivered to the Collector.

21. If any sum charged upon a person in any such duplicate of assessment is unpaid when the same becomes due the Collector in England or Northern Ireland shall have the like power of distress as may be exercised by a Collector in the case of any Income Tax charged by the General Commissioners. In Scotland any such sum which is unpaid when the same becomes due may be recovered by the Collector of half-yearly assessments in the manner prescribed by the Income Tax Acts in relation to recovery in Scotland in the case of other assessments to Income Tax.

22 Charge duplicates showing the full amount of the sums given in charge to each Collector throughout the whole year for each parish, without any discharge, diminution, or defalcation, shall be made out for every year and certified to the Commissioners of Inland Revenue by the Inspector of Taxes in whose district such parish is situated.

23. A Collector shall, whenever required by the Commissioners of Inland Revenue, deliver to the Inspector of Taxes Schedules prepared in the prescribed form, together with affidavits to be made on his oath or affirmation and signed by him, setting forth the full name of every person in his collection from whom he has not received payment of the tax given him in charge to collect, and the respective sums then in arrear or uncollected from each such person.

24. Upon delivery of any such Schedules the Inspector of Taxes may administer an oath or solemn affirmation to the Collector that he has fully paid all monies received by him and has fully accounted for all sums not received in the Schedules then delivered; and may examine the Collector on any matter touching the sums received and the sums not received, and the

substance of any answer or answers given by the Collector may in his presence be reduced into writing and read to him, with liberty to alter and amend the same in any particular and if so reduced into writing shall be signed by the Collector; and may require the Collector to pay over to the account of the Commissioners of Inland Revenue all monies received by him and then in his hands and unaccounted for.

25. Every Collector appointed by the Commissioners of Inland Revenue shall deliver Schedules of deficiencies as prescribed by Section 175 of the Income Tax Act, 1918, to such Commissioners, who shall exercise all the powers of General Commissioners in relation thereto, and may authorise any Inspector of Taxes to exercise on their behalf such powers as relate to the verification of the Schedules by oath or affirmation of the Collector and to the examination of a Collector on oath or affirmation. The Commissioners of Inland Revenue shall in such cases cause to be prepared Schedules of discharge and defaulters. Any such Schedules of defaulters shall have the same effect as if made in pursuance of the Income Tax Act, 1918.

26. Any notice to be given by an Inspector of Taxes to an employer or wage-earner or Collector of Taxes, as the case may be, may be served by post.

27. All forms and books required to be used or used in assessing, charging and collecting tax assessed by half-yearly assessments shall be provided or approved by and shall be the property of the Commissioners of Inland Revenue.

28. Summary proceedings for the recovery of tax as a civil debt shall be commenced in the name of the Collector.

29. In these Regulations the expression "parish" includes any area for which a separate Collector of half-yearly assessments is appointed.

"Wage-earner" means a weekly wage-earner employed by way of manual labour chargeable to Income Tax in respect of his wages in each half of the year instead of the whole year.

"General Commissioners" means the Commissioners for the general purposes of the Income Tax, and as regards Northern Ireland means the Commissioners for the special purposes of the Income Tax Acts.

"Special Commissioners" means the Commissioners for the special purposes of the Income Tax Acts.

"Assessment," where the context so admits or requires, includes an additional first assessment.

"Served by post" means service by post as defined by Section 26 of the Interpretation Act, 1889.

SUPERANNUATION FUNDS.

Regulations dated November 10, 1921, made by the Commissioners of Inland Revenue under Section 32 of the Finance Act, 1921 (11 & 12 Geo. 5, c. 32). (Stat. R. & O. 1921, No. 1699.)

1. Application for the approval of any fund or any part of a fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to H.M. Inspector of Taxes for the district in which the office of the fund is situated or the fund is administered and shall be supported by a copy of the instrument under which the fund is established

and two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up and such other information as the Commissioners may reasonably require.

2. Any alteration in the rules, constitution, objects, or conditions of the fund made at any time after the date of the application for approval shall be notified forthwith to the Inspector. In default of such notification, any approval given shall, unless the Commissioners otherwise determine, be deemed to have been withdrawn at the date from which the alteration had effect.

3. If the facts in regard to any fund or part of a fund shall, in the opinion of the Commissioners, cease to warrant the continuance of their approval under the above-mentioned section then and in such case the Commissioners may withdraw their approval and shall give notice to the trustees of the fund of such withdrawal, and of the date from which such withdrawal is to take effect.

4. If a fund or a part of a fund is approved by the Commissioners the fact shall be communicated to the trustees of the fund in writing and where a fund or part of a fund is approved subject to conditions these conditions shall also be communicated to the trustees of the fund in writing.

5. The expression "ordinary annual contribution" shall mean an annual contribution of a fixed amount or an annual contribution calculated on some definite basis by reference to the earnings, contributions or numbers of the members of the fund.

6. The amount of the employer's contribution which may be deducted as an expense in the case of a local authority which is assessable to income tax in respect of the profits of a trade shall be such part of the authority's total contribution as is made in respect of the persons employed in such trade, and in the case of any other employer shall not exceed the amount contributed by him in respect of the persons employed by him in the trade in respect of the profits of which he is assessable to United Kingdom Income Tax.

7. Where contributions (including interest on contributions, if any) are repaid to the employer the trustees of the fund shall deduct income tax from the amount so repaid at the rate in force for the year in which the repayment is made and such amount shall be deemed for purposes of income tax, super tax and corporation profits tax to be income of the recipient for that year; the tax so deducted shall be a debt from the trustees of the fund to the Crown and recoverable as such accordingly, and the provision contained in Section 2 of the Act of 54 and 55 Victoria, c. 38, in relation to money in the hands of any person for stamp duty shall apply to the tax so deducted.

8. Where any contributions (including interest on contributions, if any) are repaid to an employed person during his lifetime or where a lump sum is paid in commutation of or in lieu of an annuity, income tax on the amount so repaid or paid shall, except in the case of an employed person whose employment was carried on abroad, be paid by the trustees of the fund who shall make such payment at the rate of one-third the standard rate in force for the year in which the repayment or payment is made, and the said tax shall be a debt due from the trustees of the fund to the Crown and recoverable accordingly.

9. Where annuities are paid by a superannuation fund to persons residing out of the United Kingdom, income tax in respect of such annuities shall be deducted and accounted for by the trustees of the fund under Rule 21

of the General Rules applicable to Schedules A, B, C, D and E of the Income Tax Act, 1918, provided that income tax shall not be required to be deducted and accounted for in the case of a person so resident whose employment was carried on abroad.

10. The trustees or other persons having the management of a superannuation fund and an employer who contributes to a superannuation fund, shall, when required by notice from the Inspector within fourteen days from the date of such notice—

(a) furnish to the Inspector a return containing such particulars of contributions made to the fund as the notice may require;

(b) prepare and deliver to the Inspector a return containing—

(i) the name and place of residence of every person in receipt of an annuity from the fund,

(ii) the amount of the annuity payable to each annuitant,

(iii) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employed persons, and

(iv) particulars of sums paid in commutation or in lieu of annuities.

(c) furnish to the Inspector a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up together with such other information and particulars as the Commissioners may reasonably require.

11. Where an employer deducts from the emoluments paid to an employed person or pays on his behalf any contribution of that employed person to a superannuation fund he shall include particulars of such deduction or payment in any return of wages and salaries which he is required to furnish under Section 105 of the Income Tax Act, 1918, or the regulations made thereunder.

12. A claim for relief in respect of income derived from the investments or deposits of a superannuation fund shall be made and signed by the trustees of the fund and all the provisions of the Income Tax Acts which relate to claims for any allowance or deduction or the proof to be given with respect to those claims shall apply to claims for relief under Section 32 of the Finance Act, 1921, and the proof to be given with respect to those claims. Any tax for which the trustees of the fund are required to account may be set off in the settlement of such claim.

13. If a fund or part of a fund for any reason ceases to be an approved fund the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

(a) on account of returned contributions (including interest on contributions, if any), and

(b) in commutation of or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of a fund ceased to be an approved fund, and the provisions of Regulations 7 and 8 shall apply, with the necessary modifications.

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